

TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OTOMER TERM, 1923

No. 116

THE GLOBE INSURANCE COMPANY OF AMERICA  
PETITIONER

GLOBE & ROGERS FIRE INSURANCE COMPANY

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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RECORD AND TRANSCRIPT FILED SEPTEMBER 1, 1923  
RECORD AND TRANSCRIPT FILED SEPTEMBER 1, 1923

(23, 123)



(29,129)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 579.

THE QUEEN INSURANCE COMPANY OF AMERICA,  
PETITIONER,

*vs.*

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT.

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Original. Print.

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1 United States District Court, Southern District of New York.

QUEEN INSURANCE COMPANY OF AMERICA, Libellant,

v.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent.

*Statement.*

July 27, 1920. Filed Libel and Stipulation for Costs.  
 Dec. 3, 1920. Filed Notice of Appearance and Stipulation for Costs.  
 Dec. 31, 1920. Filed Answer.  
 Jan. 11, 1921. Filed Notice of Trial and Note of Issue for Feb. Term, 1921.  
 Feb. 16, 1922. Trial before Hough, C. J.  
 Mar. 13, 1922. Filed Opinion (Hough, C. J. 1929) Libel Dismissed.  
 Mar. 17, 1922. Filed Deposition for Libellant.  
 Mar. 17, 1922. Filed Stipulation and Certificate re Contents of Records.  
 Mar. 20, 1922. Filed Final Decree.  
 Apr. 6, 1922. Filed Notice of Appeal.  
 Apr. 12, 1922. Filed Assignments of Error.

2 *Libel.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The libel and complaint of the Queen Insurance Company of America against Globe & Rutgers Fire Insurance Company, in a cause of contract, civil and maritime, respectfully shows to this Honorable Court as follows:

First. The Queen Insurance Company of America is a corporation duly organized under the laws of the State of New York and engaged among other things, in the business of marine insurance in the Southern District of New York.

Second. The Globe & Rutgers Fire Insurance Company is a corporation duly organized under the laws of the State of New York, engaged, among other things, in the marine insurance business in the Southern District of New York.

Third. The Asbestos & Mineral Corporation is a corporation organized under the laws of New York, engaged, among other things, in the export of asbestos from the United States.



Fourth. Capamianto is a corporation duly organized under the laws of the Kingdom of Italy, doing business at Turin and elsewhere.

3 Fifth. On or about the 25th day of May, 1918, the Asbestos & Mineral Corporation shipped six hundred (600) bags of asbestos fibre on board the steamship "Napoli," to be carried from the port of New York to the port of Genoa, Italy, and there to be delivered unto the order of the British Consul, notify Capamianto.

Sixth. The Asbestos & Mineral Corporation insured the said shipment against marine risks with your libellant, Queen Insurance Company of America, under a certificate of insurance numbered 52,396, a photographic copy of which is hereto annexed and marked Exhibit "A." Said certificate of marine insurance, provided, among other things, as follows:

"7. This certificate subject to the full terms of the policy in respect of being warranted free of capture, seizure and detainment and the consequences thereof or of any attempt thereat, and also from all consequences of riots, civil commotions, insurrections, hostilities or warlike operations whether before or after Declaration of War."

The policy therein referred to, numbered M 112,000, provided:

"Warranted by the assured free from loss or expense arising from capture, seizure, restraint, detention or destruction and the consequences thereof, or of any attempt thereat, and also from all  
4 consequences of riots, insurrection, hostilities or warlike operations, whether before or after declaration of war, and whether lawful or unlawful, and whether by the act of any belligerent nations, or by governments of seceding or revolting States, or by unauthorized or lawless persons therein, or otherwise."

A copy thereof is hereto annexed and marked Exhibit "AA."

Seventh. The Asbestos & Mineral Corporation also insured the said shipment against war risks in the sum of Fifteen Thousand Eight Hundred Dollars (\$15,800) with the respondent, Globe & Rutgers Fire Insurance Company, under the terms of certificate No. WR-93,794, a photographic copy of which is hereto annexed and marked Exhibit "B." Said certificate provided, among other things, as follows:

"It is agreed that this insurance covers only the risk of capture, seizure, or destruction, or damage, by men-of-war, by letters of mart, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations."

5 Eighth. Thereafter the Asbestos & Mineral Corporation duly endorsed the insurance certificates and bills of lading, and the British Consul General at Genoa also endorsed the said bills of lading, and the said bills of lading thereafter in due course



came into the hands of Capamianto and Capamianto became the owner of the said asbestos fibre and was such owner at all material times and was entitled to recover upon the said certificates of insurance upon the happening of any of the events thereby insured against.

Ninth. The Italian Steamship "Napoli" with the said goods on board, sailed from the port of New York on the 13th day of June, 1918, and arrived at Gibraltar without unusual incident. Thereafter, and on June 30th, 1918, the steamship "Napoli" sailed from Gibraltar as part of a convoy bound for Genoa. The said convoy was directed by the competent naval authorities of Great Britain to follow a certain course designated by such authorities, to Genoa, and the vessels of the convoy received instructions from the said authorities as to various particulars of their navigation, including instructions not to show navigating lights at night, to travel in a formation of columns, in which the vessels were closer together than they would have been if navigating without convoy, and to obey orders from the warships accompanying the convoy in the event of the observed or reported presence or nearness of German submarines. The reason for such instructions was that, because of the existing state of war, German submarines were known to be in the Mediterranean in or near the waters through which the convoy would necessarily pass, and the convoy was formed and such navigation instructions  
6      were given by reason of expected attacks by German submarines. Some or all of the vessels in the convoy carried munitions and/or contraband, and all of them were liable to condemnation or destruction under the German law, and, in fact, would have been sunk by any German submarine that was afforded the opportunity of sinking them. It was well known that German submarines were present on or near the course of the convoy and encounters with them were expected.

Tenth. Another convoy, at about the same time, sailed from the port of Genoa to Gibraltar, including, as one of the vessels in it, the British steamship "Lamington". The said convoy received similar instructions from the proper Italian and/or British authorities as to the course to be taken and manner of their navigation. The course prescribed for the westbound convoy, including the steamship "Napoli", and the course prescribed for the eastbound convoy, including the steamship "Lamington", were so laid out by the duly constituted authorities that they would meet in the course of their navigation.

Eleventh. Thereafter both convoys proceeded upon their way, neither convoy knowing of the approach of the other. The eastbound convoy received various warnings of the nearness of submarines and made certain shifts in its course during the said voyage, in accordance with the order of the duly constituted naval  
7      authorities, the details of which the libellant is at present unable to state. On the evening of July 4th, 1918, a submarine was reported in close proximity to the eastbound convoy and



certain changes in the course of said convoy were thereupon made in accordance with the orders of the naval authorities. The westbound convoy similarly proceeded in accordance with orders and received warnings of submarines during the said voyage, and was, in fact, attacked by a submarine shortly before the collision herein-after referred to.

Twelfth. At about 11.30 P. M., on the 4th of July, 1918, Greenwich time, which was about midnight by the ship's time, the said convoys met approximately head on in Lat. 43° North, Long. 7° 58' East, of Greenwich. Both convoys were proceeding without any navigating lights, the eastbound convoy at a speed of approximately seven and one-half knots and the westbound convoy at a speed of approximately eight and one-half knots, both in formation and on courses prescribed by the convoying warships to avoid the submarines known to be on or near the course followed by the said convoys. The night was dark and somewhat hazy. Neither convoy observed the other, nor, in the state of the weather and under the navigating conditions, could observe the other, until they were about 3,000 feet apart. At that time the lookout on the steamship "Napoli" observed the loom of several vessels approaching slightly on the starboard bow on courses which, if maintained, would result in a collision. The eastbound convoy was arranged in accordance with the convoy orders, in six columns, six vessels traveling  
8 abreast in the front row. The westbound convoy was in columns, eight vessels in the first row, six in the second and three in the third. In view of the position of the boats in the convoy, it was impossible for either convoy to avoid the other after the convoys became aware of the presence of each other, and collision between some of the vessels of the two convoys became inevitable. It was impossible for the vessels in either convoy to stop because there was not sufficient time to signal to the vessels in the rear rows orders to stop, and if the vessels in the front rows had stopped, the vessels in the rear rows would have continued their course and have overrun and collided with the vessels ahead of them. Nor was there time to signal orders to the other vessels in the convoy so that the convoys could manoeuvre in any way as a whole to avoid the collision. The only course that could be followed was for each vessel to continue in the same general direction, avoiding collision with the approaching vessels as best it could. The "Napoli" and the "Lamington" and the other vessels of the two convoys promptly turned on their navigating lights and the "Napoli" blew one blast of her whistle indicating her intention to go starboard. Thereafter the two convoys met approximately head on, the vessels of one convoy going between the vessels of the other convoy, and a number of collisions resulted. The master of the steamship "Napoli" acted with all due care in the navigation of his vessel and the master of  
9 the steamship "Lamington" acted with all due care in the navigation of his vessel. Great confusion among all the vessels in the convoys resulted from the meeting of the convoys, and in the course of the confusion the steamship "Lamington"



rammed the steamship "Napoli" on the port side in hold No. 3 slightly forward of the center of the vessel. As a result of the collision the steamship "Napoli" sank with the asbestos fibre here above referred to still on board, and such asbestos fibre (as well as the vessel and her other cargo) became a total loss.

Thirteenth. Upon information and belief, the said loss was the proximate result of war perils insured against by the said certificate issued by the respondent above referred to.

Fourteenth. After the happening of the said loss and before the full facts surrounding the collision were known and before it could be definitely determined whether the loss was a war or a marine loss, it was mutually agreed between the libellant, the respondent and Capamianto that the libellant and the respondent should each advance to Capamianto as a loan one-half ( $\frac{1}{2}$ ) of the amount insured by each of them, subject to adjustment between the libellant and the respondent when the facts as to the collision became fully known. Thereafter the libellant and the respondent each advanced to Capamianto the sum of Seven Thousand Nine Hundred Dollars (\$7,900.) without prejudice. The libellant made such advance upon the terms set forth in the receipt hereto annexed and marked Exhibit "C", and Capamianto, under the terms of the said receipt, duly assigned to the libellant all his claims against the respondent under the said war risk insurance.

Fifteenth. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against the Globe & Rutgers Fire Insurance Company, the respondent herein, and that the said respondent be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court be pleased to decree to your libellant its damages, with interest and costs, — our libellant may have such other and further relief as in law and justice it may be entitled to receive.

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*

No. 64 Wall Street, Borough of Manhattan, New York City.

11 STATE OF NEW YORK,  
*County of New York, ss:*

John E. Hoffman, being duly sworn, says:

That he is the Marine Manager of the Queen Insurance Company of America, a corporation and duly authorized to make this verification. He further says that he has read the foregoing Libel



and that it is true to the best of his knowledge, information and belief.

That the reason why this verification is not made by the libellant is that the libellant is a corporation.

JOHN E. HOFFMAN,  
*Marine Manager.*

Sworn to before me this 27th day of July, 1920.

[SEAL.]

EDWARD A. QUINLAN,  
*Notary Public, Kings Co. Clk's No. 2.*

Kings County Reg. No. 2003.

N. Y. Co. Clk's No. 4, Reg. No. 2004.

Term expires March 30, 1923.

(Here follow Exhibits "A," "AA," and "B," marked pages 12, 13, and 14.)







No. 52396

# QUEEN

**INSURANCE COMPANY OF AMERICA**

84 WILLIAM STREET. NEW YORK.

MARINE DEPARTMENT

JOHN E. HOFFMAN, M.D.

New York, May 26th, 1978. 101

**This is to Certify.** That on the 16th day of May 1918, this Company  
insured under Policy No. M 112000, made for ASBESTOS & MINERAL CORPORATION

TWENTY FIVE THOUSAND EIGHT HUNDRED. *Dollars.*  
 600 bags asbestos fiber (Under Deck)

Valued at sum insured. Shipped on board of the S/S "NAPOLI".

at and from New York to Turin via Genoa. Italy direct or otherwise

... and it is hereby understood and agreed, that in case of loss such  
... loss is payable to the order of assured or order on surrender of this Certificate,  
... and when so paid liability under this Certificate is discharged.

*This Certificate represents and takes the place of the Policy, and conveys all the rights of the Original Policy-holder (for the purpose of collecting any loss or claim), as fully as if the property were covered by a Special Policy direct to the holder of this Certificate, and free from any liability for unpaid premiums.*

*This Certificate not valid unless countersigned by  
the Assured or an Agent of the Company*

*Counterinspired.*

## MARKS AND NUMBERS

[illegible]

conform with the Revenue Laws of Great Britain, in order to collect claims, this certificate must be stamped within TEN DAYS after receipt in the United Kingdom.

## CLAIMS

SUBJECT TO PARTICULAR ARRANGEMENTS, IF APPLICABLE TO

3. Including rate of draft to and from the ship or vessel, each craft to be towed a separate fee.

5. Claims to be adjusted according to the manner of Lloyd's but subject to the conditions of the Policy.

6. Warranted free of loss or damage caused by strikers, locked out employees or persons taking part in labor disturbance or strike or strike action.

8. This Certificate shall not be vitiated by any unintentional error in

...of voyage or interest, or by deviation, provided the same be communicated to Amersy as soon as known to the Amersy, and an additional premium paid if required.

6. It is hereby agreed that any loss or claim under this Certificate, shall be paid at the current rate of exchange on the day of payment of the premium paid if required.

to pay at the current rate of exchange on the day of payment at the offices of the Company, in New York, Liverpool or London, or at any other place where the Company may have branches, provided it is stipulated as

HENRY E. GILINCO CO., INC.

ORIGINAL

23

7. This Certificate subject to the full terms of the policy in respect of being warranted free of cost, censure and disavowal, and the annuities thereof or of any attempt thereof, and the annuities of risk, and annuities, surrenders, limitations or warlike operations, whether before or after Declaration of War.

5. The sum insured is hereby assigned to the use of transfer of part or whole of a shipment to drifter or steamers other than those named in this Certificate, it being understood that participation of any such transfer shall be promptly sent to the Company by this insured whenever the same shall come to their knowledge.

6. It is hereby understood and agreed that in case of loss or damage sustained by the property insured under this Certificate, the same shall be reported to the office of the Company, either in Liverpool or London, as may be known, or to the port of destination or to the damaged goods arriving at either port. It is agreed that any loss or damage shall be properly reported for attention to the nearest agents of the Company.

<sup>16</sup> The Gortchikoffs to be used in original and duplicate, one of which accomplished the other to stand well and work.







Marks and Nos.

15800.

MARINE DEPARTMENT

CERTIFICATE OF INSURANCE

No. WR93794

**The Globe & Rutgers Fire Insurance Company**

ORIGINAL AND DUPLICATE ISSUED  
ONE REJAG ACCEPTED ALL

111 WILLIAM STREET

NEW YORK, MAY 27th, 1918.

This is to Certify, That on MAY 27th, 1918. this Company insured

under Policy No. WR93794. for ASBESTOS & MINERAL CORP.,

the sum of FIFTEEN THOUSAND EIGHT HUNDRED Dollars,  
on 600 BAGS ASBESTOS FIBRE

Subject to the conditions of the policy and contract of insurance.

valued at ~~300,000~~ - \$25800.

shipped on board of the SS "NAPOLI" at and from

NEW YORK TO TURIN VIA GENOA, DIRECT OR OTHERWISE

and it is hereby understood and agreed, that in the case of loss, such loss is payable only in New York to the

Order of ASSURED OR ORDER on surrender of this Certificate.

Countersigned

*[Signature]*  
Secretary

*[Signature]*  
President

Henry E. Otto & Co.

HENRY E. OTTO & CO. INC.

*EL B*

EXHIBIT B







## EXHIBIT "C."

Received from Queen Insurance Company of America, the sum of Seventy-nine hundred and 00/100 Dollars (\$7,900.00/100) as a loan and not as payment of any loss.

The occasion for this loan is the loss of the property described below, shipped on the steamer "Napoli," reported to have been recently sunk. Pending a determination of the question whether this loss is recoverable from war risks underwriters, the said Insurance Company has advanced to us the above sum without prejudice to the question of its liability; but upon the understanding that if it shall ultimately prove that it is liable for the loss of said property to us or to persons on whose behalf we are authorized to collect such loss, under the terms of its policy or certificate of marine insurance, No. 52396, the amount so advanced shall be credited on the amount of such claim.

In consideration of this advance, we guarantee that we are the sole owners of the said property and that we will prosecute all claims which we may have against any war risk underwriters or third parties (including Governments) or against any vessel, by reason of the loss of said property, with all diligence and dispatch, under the direction and control of the said Insurance Company; and we further agree to refund promptly to the said Insurance Company any sums or amounts which we may be able to recover under any war risk insurance and/or from any such third party or vessel.

16 In any event, we agree to return the amount of the said loan upon demand made by the said Insurance Company, unless we can establish that we have a good and valid claim against the said Insurance Company under its policy or certificate above mentioned for the loss of the property below described.

It is, however, understood that in case any demand is made for the return of the said loan, as above set forth, we shall have a reasonable time in which to establish any claim which we may have against the said Insurance Company and shall not be bound to return the said loan until we have had a reasonable time to establish, by legal proceedings or otherwise, whether we have a valid claim under the said policy or certificate of the said Insurance Company.

As security for our performance of this agreement, we hereby agree to hold as Trustees for the said Insurance Company, our claims against any such war risk underwriters or third parties, or vessels, as hereinbefore mentioned, and also to hold as such Trustees any moneys collected upon, or by virtue of, any such claims; and we have deposited the bills of lading for the above mentioned goods, together with the documents evidencing the war risk insurance thereon, with the said Insurance Company as security for our performance of this agreement. It is understood that if these documents are later delivered to us for the prosecution of any suit or claim, they shall be held by us as Trustees in like manner as we hold the said claims.



17 In further consideration of the said loan, we hereby appoint John E. Hoffman, Marine Manager and Bert S. Beckman, Marine Loss Adjuster of said Insurance Company, our agents and attorneys in fact, with full and irrevocable power to begin, prosecute and withdraw, in our name, any and all claims, suits or proceedings against any war risk underwriters, third parties or vessels, against whom or which we may have any claim for the loss of the said goods; and to execute in our name and deliver any and all documents which they may deem necessary or proper in connection with the said claims, suits or proceedings. Provided, however, that the said agents and attorneys shall not incur any expense for our account without previously obtaining our consent thereon.

Dated, ———, 1918.

[SEAL.]

"CAPAMIAN TO,"

*Societa Anonima Italiana L'Administratore Delegato.*

18

*Description of Property.*

600 bags asbestos fibre C #10 Genoa, as per bill of lading of the Transoceanic Steamship Co. dated New York, May 25, 1918.

Shippers' Marks: Notify Capamianto Company, c/o "Eternit," Tuin, Italy. #10.

Visto per La Legalizzazione della fir.

(Del Sig.)

— — — — —  
— — — — —

(Stamp and Seal)

19

KINGDOM OF ITALY,

*City and Province of Turin,*

*Consulate of the United States of America, ss:*

I, the undersigned Consul of the United States of America at Turin, Italy, do hereby certify that Sig. Lauza who has signed and sealed with the official seal of his office the annexed instrument, was at the time of so doing, and is the duly appointed — in this consular district, that his signature thereunto as such is true and genuine, and is entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed my official seal this 8th day of October, 1919.

RICHARD B. HAVEN,

*Vice Consul of the United States  
of America at Turin, Italy.*

(Seal and Stamp.)

Service No. 1994.

Fee received: Lire 23.00.

Equal in U. S. Currency to \$2.00.



*Answer.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Globe & Rutgers Fire Insurance Company to the libel and complaint of The Queen Insurance Company of America in an alleged cause of contract, civil and maritime, alleges as follows:

First. The respondent admits the allegations of the first article of the libel.

Second. The respondent admits the allegations of the second article of the libel.

Third. The respondent admits the allegations of the third article of the libel.

Fourth. The respondent admits the allegations of the fourth article of the libel.

Fifth. The respondent admits the allegations of the fifth article of the libel.

Sixth. The respondent admits the allegations of the sixth article of the libel, but for greater certainty in the premises begs leave to refer to the original certificate and policy to be produced on the trial.

Seventh. The respondent admits the allegations of the seventh article of the libel, but for greater certainty in the premises begs leave to refer to the certificate and policy to be produced on the trial.

Eighth. The respondent admits the allegations of the eighth article of the libel.

Ninth. The respondent admits that instructions were given by the Naval authorities of Great Britain to vessels sailing in convoy, but it denies any knowledge or information sufficient to form a belief as to the nature of such instructions, and asks for the production of any orders issued by such authorities. It denies any knowledge or information sufficient to form a belief as to whether some or all of the vessels in the convoy carried munitions and/or contraband, or were liable to condemnation or destruction under German law.

Further answering, the respondent admits the other allegations of the ninth article of the libel.

Tenth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the tenth article of the libel.

Eleventh. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the eleventh article of the libel.



22 Twelfth. The respondent admits that in the early morning of July 5, 1918, a collision occurred between the Napoli and the Lamington, as a result of which the Napoli sank and, with her cargo, became a total loss. It denies any knowledge or information sufficient to form a belief as to the other allegations of the twelfth article of the libel.

Thirteenth. The respondent denies the allegations of the thirteenth article of the libel.

Fourteenth. The respondent admits the allegations of the fourteenth article of the libel.

Fifteenth. The respondent admits the allegations of the fifteenth article of the libel.

Sixteenth. Further answering, the respondent alleges that the loss of the Napoli and her cargo was not a risk within the terms of the respondent's policy.

All and singular the premises are true.

Wherefore the respondent prays that the libel herein may be dismissed with costs.

BURLINGHAM, VEEDER, MASTEN &  
FEAREY,

*Proctors for Respondent.*

Office and P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

23 SOUTHERN DISTRICT OF NEW YORK,  
*City and County of New York, ss:*

Charles C. Burlingham, being duly sworn says: I am one of the proctors for the respondent herein; I have read the foregoing answer and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

The sources of my knowledge and information are communications received from the respondent, and its agents, and an examination of the papers relating to the matter in suit.

The reason why this verification is not made by the respondent is that said respondent is a corporation.

CHARLES C. BURLINGHAM.

Sworn to before me this 27th day of December, 1920.

LOTTIE V. JERNIGAN,  
*Notary Public, New York Co., No. 49.*

Register's No. 1143.  
Term Expires March 30, 1921.



23½

*Trial.*

Before Hon. Charles M. Hough, C. J.

New York, February 16, 1922.

## Appearances:

Harrington, Bigham &amp; Englar (Oscar R. Houston), for Libellant.

Burlingham, Veeder, Masten &amp; Fearey (Charles C. Burlingham, Van Vechten Veeder and Ralph W. Brown), for Respondent.

Mr. Houston: We have entered into a stipulation with the respondent which we will offer in evidence. Have you any additional documents which you wish to offer, Mr. Burlingham?

Mr. Burlingham: We will offer a copy of the judgment of Mr. Justice Hill in the action of *Cotonifici Riuniti Di. Salerno* and *Lamar Flemming, Jun.*, against the owners of the steamship *Lamington*, reported in Lloyd's List Law Reports. It will appear as No. 20 in the stipulation.

*Libellant's Proofs.*24 *Stipulation as to Documents and Depositions to be Offered in Evidence.*

United States District Court, Southern District of New York.

QUEEN INSURANCE COMPANY OF AMERICA, Libellant,  
against

GLOBE &amp; RUTGERS' FIRE INSURANCE COMPANY, Respondent.

It is hereby stipulated that the original or copies of the documents hereinafter described, or any part thereof, may be offered in evidence by either party without further proof, and that such documents, when offered in evidence, shall have the same force and effect as if the persons whose statements are so admitted or the persons who prepared such documents or the persons upon whose testimony they are based, had personally testified to the facts therein stated.

With respect to the U. S. S. "Castine," the following documents:

1. Transcript of sailing orders.

25      2. War Diary.

3. Log.

4. Communication Record.

With respect to the U. S. S. "Yankton," the following documents:

5. Transcript of sailing orders.

6. War Diary.



7. Log.

8. Communication Record.

Charts:

9. Chart of the Gulfs of Lyons and Genoa marked Libellant's Exhibit "1" in connection with the deposition of Captain Asserson.

10. Sketch of the collision marked Libellant's Exhibit "2" for identification.

Papers Relating to the Italian Court of Inquiry:

11. Report on the Sea Voyage before the Genoa Civil Tribunal by the Master and certain members of the crew of the steamship "Napoli".

12. Act. No. 15506 of the Repertory, being in the nature of an extended protest.

13. Findings of the Commission of Inquiry of the Italian Ministry of Marine.

14. Letter from the Royal Italian Embassy, dated June 2nd, 1920.

Papers in connection with the British Investigation:

15. Letters from the Secretary of the British Admiralty dated September 19, 1919, July 10, 1920, September 10, 1920, and March 4, 1921.

16. Depositions of Gerolamo Bologna, Master of the steamship "Napoli", and Pasquale Landi, Second Officer of the steamship "Napoli".

Depositions taken in this country:

17. Deposition of Captain Asserson, Commander of the U. S. S. "Castine".

18. Deposition of Captain Burns, Commander of the U. S. S. "Yankton".

19. Memorandum of facts by M. A. Goodrich, Ensign of the U. S. S. "Yankton".

20. Opinion of Mr. Justice Hill.

21. Affidavit of Charles Hann, Jr.

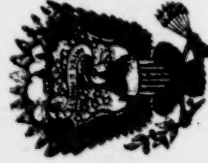
22. Letter from Burlingham, Veeder, Masten & Fearey to O. R. Houston, March 2, 1922.

Dated, New York, April 20, 1922.

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*  
BURLINGHAM, VEEDER, MASTEN &  
FEAREY, *Proctors for Respondent.*



# United States of America



## NAVY DEPARTMENT.

Washington, February 4, 1921.

I hereby certify that the annexed transcript of sailing orders of USS CASTLE No. 520 dated at Gibraltar June 28, 1917, as appearing in War Diary of that vessel for the period from July 1 to July 15, 1918.

the Office of the Chief of  
on file in the Naval Operations (Division of Intelligence).  
(Historical Section)

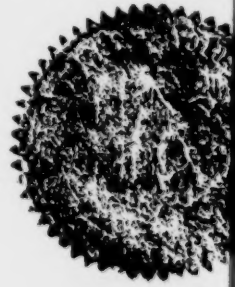
W.D. MacDougall  
Captain, U.S.N.

Officer in Charge.

## Office of the Secretary.

I hereby certify that W. D. MacDougall, Captain, U. S. N., who signed the foregoing certificate, was at the time of signing Officer in Charge of Historical Section, Div. of Intelligence, Naval Operations and that full faith and credit should be given his certification as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this 5th day of February, one thousand nine hundred and twenty-one.



Joseph B. Smith  
Assistant Secretary



## SECRET.

TO BE KEPT IN THE STEEL CHEST EXCEPT AT SEA. NOT TO BE COMMUNICATED  
TO OFFICERS BEFORE SAILING. TO BE BURNED WHEN FINISHED WITH.

Office of Chief of Staff  
GIBRALTAR

28th June, 1918.

S.O. 520

## Memorandum

1. The Genoa Convoy (G.Ga. 37) will sail at 1000 on the 30th June. The Commanding Officer of H.M.S. "JEANETTE II" (Captain Ryan, R.N.R.) is the Senior Officer. The Escort consists of:

H.M.S. "JEANETTE II" (Captain Ryan R.N.R.)

U.S.S. "CASTINE"

It. Escort Vessel "TOORA"

H.M.T. "ALGOL"

2 T.B.'s until Sunset.

Commander Aymerich Ignacio R.I.N. in S.S. "

"is the

Comodore.

The Conference of the Commanding Officers of the Escorts, Commodore and Masters will be held at 1700 on the 29th June in the Temporary Schoolroom in the Dockyard.

2. The Route to Genoa is as follows:

After leaving Europa Point steer to pass through the following positions:

(1) Lat. 36..30 N.	Long. 04..00 W.
(2) " 36..00 N.	" 00..40 W.
(3) " 36..20 N.	" 00..50 W.
(4) " 37..10 N.	" 03..05 E.
(5) " 37..10 N.	" 05..08 E.
(6) " 41..20 N.	" 07..40 E.
(7) " 41..47 N.	" 07..43 E.
XH(8) " 42..58 N.	" 07..50 E.

TOULON RENDEZVOUS.  
GENOA RENDEZVOUS.

Thence according to Instructions from Genoa.

3. The Escort ships are to be underweigh and in their forming up positions by 0900 on the 30th June; the Convoy will proceed as laid down in attached sheet (Appendix O).

4. When the Convoy is formed the leaders of divisions will take up their patrolling stations as laid down in Appendices A & G.

5. Ships which continually delay the convoy through lack of speed are to be detached into the nearest Allied Defended Port.

6. The Convoy is timed to arrive at the TOULON R.V. (41..47 N.-- 7..43 E. at 0900 on the 5th July steering for a position on (48..58 N.-- 7..50 E. The GENOA R.V. The Commodore is to report through the Senior Officer of the Escort by W/T to Viadux MARSEILLES how many hours ahead or behind the schedule time of arrival the convoy



-2-

is expected to be at the TOULON R.V.

When the French Escort joins the convoy he is to detach the ships for the GULF OF LYONS which have been placed in the Port Columns. Attention is called to G.A. C-28 Note to Para 51 and G-3-O. No. 23.

7. The Convoy is on no account to slow up to meet the French Escort at TOULON R.V. If the French Escort is not met the ships for the GULF OF LYONS should proceed with the convoy to GENOA.

8. The convoy is timed to arrive at the GENOA R.V. (42..26 M. --7..50P) at 1900 on 5th July. The Commodore is to report through the Senior Officer of the Escort by W/T to Madelena or Cape Sperone for Viadux Genoa. 24 hours before arriving the number of hours he is ahead or behind the scheduled time of arrival in accordance with instructions issued with the Secret Positions which are to be obtained from Operations before sailing.

9. The Convoy is timed to arrive off GENOA at 0900 on the 6th July which time is to be kept. As much zig-zagging as time allows is to be carried out.

10. H.M.S. JEANNETTE II, U.S.S. CASTINE, 1 Italian Escort Vessel and H.M.T. "ALCOL" will escort a convoy (G-3-O. 37) from GENOA to GIBRALTAR leaving Genoa on the 7th July.

11. All times mentioned in these orders are Greenwich Mean Time.

12. The following enclosures contain additional information:

- (a) Plan of Convoy.
- (b) Details of ships in Convoy (Given at Conference.
- (c) Plan of forming up Convoy.
- (d) Admiralty and other recent orders not yet contained in printed orders or in Gibraltar Patrol Orders.
- (e) Secret Datum Positions.
- (f) List of Signal men with Convoy.
- (g) Patrolling Stations of Escorts.
- (h) Plan of ships bound to Italian Ports South of Genoa after being detached. GIVEN AT CONFERENCE.

13. The Commanding Officers of Escorts are to visit Operations Room before sailing to obtain the latest information.

14. The receipt of these orders is to be acknowledged by signal in the form "S.O. 520 received"

I.B. Grafton  
Chief of Staff for  
Senior Naval Officer, GIBRALTAR.



United States of America,



NAVY DEPARTMENT.

Washington, February 19, 1921.  
I hereby certify that the annexed is a true copy of the  
"War Diary" of the USS CASTINE from July 1. to July 6th, 1918  
inclusive.

on file in the Office of the Chief of Naval Operations (Historical  
Section.)

*W.D. MacDougall*  
W.D. MacDougall,  
Captain, U.S.N.  
(Signed also) In Charge

Office of the Secretary.

I hereby certify that W.D. MacDougall  
who signed the foregoing certificate, was at the time of  
signing Officer-in-Charge Historical Section, Office of the Chief  
of Naval Operations.  
and that full faith and credit should be given his  
certification as such.

in testimony whereof, I have here-  
unto set my hand and caused the  
Seal of the Navy Department to  
be affixed this 23rd day  
of February, one thousand  
nine hundred and twenty-one



*John A. ...*  
Assistant Secretary



## U.S.S. CASTINE

1 July, 1918.

1. In company with escort and convoy as yesterday enroute to GENOA, ITALY.  
Positions: 8 a.m. (Obs) Lat. 35..49 N. Long. 1..53 W.  
Moon (Obs) Lat. 35..55 N. Long. 0..55 W.  
8 p.m. (Obs) Lat. 36..22 N. Long. 0..15 E.
2. Overcast to fair first part with gentle to moderate breezes from NW shifting to West. Fair last part to clear with moderate and strong breeze from West decreasing to light breezes and airs and shifting to SW.
3. On escort duty. Escort and convoy in same formation as yesterday. Convoy generally in poor formation. Zigzagged on station. Uneventful. Sighted a trawler on patrol when off ORAN, ALGERIA.
4. x x x x x
5. Allies and war warnings of possible interest received as follows: Govt. war warning, received 9 p.m. "Enemy submarines off GULF of LYONS."
6. x x x x x
7. x x x x x
8. x x x x x
9. x x x x x
10. x x x x x
11. Received at 9:31 p.m. intercepted radio in S.O.S. form telling of torpedoing of U.S.S. COWINGTON.

2 July, 1918.

1. In company with escort and convoy as yesterday, enroute to GENOA, ITALY.  
Positions: 8 a.m. (Obs) Lat. 36..54 N. Long. 2..07 E.  
Moon (Obs) Lat. 37..06 N. Long. 3..00 E.  
8 p.m. (Obs) Lat. 37..20 N. Long. 4..54 E.
2. Fair: Light variable airs and calms first part. Light airs from ENE to NE last part.
3. On escort duty. Escort and convoy in same formation as yesterday. Convoy generally in poor formation during day, improving toward latter part. Zigzagged on station. Uneventful. Sighted two FRENCH dirigibles during forenoon, one of which accompanied the convoy until nearly dark. Sighted two seaplanes during afternoon and several patrol boats.
4. x x x x x
5. x x x x x
6. x x x x x
7. x x x x x
8. x x x x x
9. x x x x x
10. x x x x x
11. x x x x x



3 July, 1918.

1. In company with escort and convoy as yesterday enroute to GENOA, ITALY.  
Positions: 8 a.m. (Obs) Lat. 38..38 N. Long. 5..48 E.  
Moon (Obs) Lat. 39..06 N. Long. 6..13 E.  
8 p.m. (Obs) Lat. 39..58 N. Long. 7..06 E.
  2. Clear to fair and partly cloudy. Calms and light variable airs first part. Light airs to gentle breezes from NNW last part.
  3. On escort duty. Escort and convoy in same formation as yesterday. Convoy formation fair to poor. Zigzagged on station. Uneventful.
4. x x x x x  
5. x x x x x  
6. x x x x x  
7. x x x x x  
8. x x x x x  
9. x x x x x  
10. x x x x x  
11. x x x x x

4 July, 1918.

1. In company with escort and convoy as yesterday enroute to GENOA, ITALY, except that at 11:25 a.m. sighted a FRENCH trawler and one ship was detached and proceeded under escort of this trawler towards MARSILLIES. After 11:38 p.m. acting independently proceeding to assistance of ships in convoy that had been in collision with a convoy standing to the southward.  
Positions: 8 a.m. (Obs) Lat. 41..15 N. Long. 7..32 E.  
Moon (Obs) Lat. 41..40 N. Long. 7..36 E.  
8 p.m. (Obs) Lat. 42..40 N. Long. 7..48 E.
2. Fair to clear. Moderate to fresh and strong breezes from NNW and NW during first part, decreasing last part to light airs and becoming variable.
3. On escort duty. Escort and convoy in same formation as yesterday. Formation of convoy generally poor to fair. Zigzagged on station until 11:38 p.m. (G.M.T.) At which time made out ships ahead which turned out to be another convoy standing to the Southward, on nearly opposite course to this convoy. Convoy and escorting ships turned on running lights and began to maneuver to avoid collision. This ship was forced to turn to port by several ships of own convoy turning toward us. In a few minutes heard crash of collision between two ships; turned to rear with left rudder to avoid convoy and to come up to assistance of ship from rear. Heard another crash of collision. Was forced to southward and westward a considerable distance before being able to clear and get around the south-bound convoy. At 1:10 a.m. 5th July came up with S.S. NAPOLI, in sinking condition, ITALIAN Auxiliary TUGRA standing by and transferring crew. NAPOLI sunk at 1:52 a.m. --- no casualties. Saw another ship about half a mile distant



3. apparently sinking. Proceeded toward her found her to be the S.S. OTTO SVERDRUP (Norwegian) abandoned and crew in boats. Picked up crew, Her Captain and several of her officers and crew returned on board of her to ascertain conditions. Sent Lieutenant Ertz, U.S.N. to investigate. found ship would float for sometime. Sent radio to GENOA for tug assistance. After S.S. NAPOLI sunk, communicated with ITALIAN AUXILIARY TOCRA, which then, at 2:53 a.m., proceeded with COMMOORE and survivors towards SPEZIA, ITALY. (See Appendix I for report). *From St. Louis, Mo. 5:17 P.M.*
4. x x x x
5. Allots and war warnings of interest received as follows: From intercepted radiograms learned that a ship had been torpedoed out of a convoy at above position and that a BRITISH trawler was standing by. Also concluded that this convoy might be met during the night.

6. x x x x  
 7. x x x x  
 8. x x x x  
 9. x x x x  
 10. x x x x  
 11. x x x x

5 July, 1918.

1. Acting independently standing by S.S. OTTO SVERDRUP, damaged in collision, and proceeding with her in tow to ONEGLIA, ITALY.  
 Position: 8 a.m. (Obs) Lat. 43..12 N. Long. 8..04 E.  
 Noon (Dr) Lat. 43..30 N. Long. 8..08 E.  
 8 p.m. (Obs) Lat. 43..24 N. Long. 8..17 E.
2. Clear to partly cloudy to overcast last part. Calms and light airs from SW.
3. Standing by S.S. OTTO SVERDRUP, damaged by collision last night. Her engineroom stoke-hold flooded, also No. 2 hold flooded. Other compartments free of water and bulkheads holding. At 6:50 sighted FRENCH trawler CREMERI standing toward us. Directed her to assist and to tow damaged ship towards SPEZIA. Picked up and took in tow four motor boats that had been on SS NAPOLI. Proceeded during forenoon and part of afternoon towards SPEZIA. Trawler proved inadequate to tow steamer, therefore decided to tow her with this ship, as tugs sent for had not arrived. Made preparations to take steamer in tow when sighted two tugs standing toward us. They proved to be not ready to tow so in order to gain time, took ship in tow and set course for ONEGLIA, ITALY. Sent FRENCH trawler to her base. Put motor boats in tow of OTTO SVERDRUP and used two tugs as escort one on either flank. Proceeded towards ONEGLIA, ITALY in this formation.

4. x x x x  
 5. x x x x  
 6. x x x x  
 7. x x x x  
 8. x x x x  
 9. x x x x  
 10. x x x x  
 11. x x x x



6 July, 1918.

1. Enroute to ONEGLIA, ITALY with S.S. OTTO SVERDRUP in tow, two ITALIAN TUGS acting as escort. Also acting singly enroute to and searching position of an allo received, and then enroute to GENOA, ITALY, where moored at 8:06 p.m.  
Positions: 8 a.m. (Obs) Lat. 43-49 N. Long. 8-02 E.  
Noon (Obs) Lat. 43-51 N. Long. 8-24 E.
2. Fair first part, calms with light airs generally from Southward and westward. Cloudy to overcast and misty last part with light variable airs.
3. Towing S.S. OTTO SVERDRUP and four motor launches towards ONEGLIA, ITALY, with two ITALIAN tugs acting as escort, one on either flank. At 2:15 a.m. two of the motor boats were missing from the tow. One of the tugs picked up one of the boats later, the more seriously damaged one probably sunk. At 6:35 a.m. tug ran tow line to SVERDRUP and began to assist in towing, but due to difference in towing capabilities this ship was forced to cut tow line at 7:25 a.m. and thereafter tug D6 towed SVERDRUP to port, this ship and other tug acting as escort. When off entrance to ONEGLIA at 8:47 set course for GENOA. At 9:45 intercepted an Allo from FRENCH submarine chasers in the vicinity, and proceeded towards them. Met one chaser and one trawler with hydroplanes in tow standing towards coast, and later sighted three chasers standing to Eastward and on listening patrol. Searched in Northern sector from ALLO on courses to intercept submarine, estimating her speed at two knots, until 1 p.m. when set course for GENOA, having intercepted a message from chasers that the Allo was based on hearing a submarine and that they had resumed their ordinary patrol. Moored in harbor of GENOA at 5:06 p.m.



# United States of America,



## NAVY DEPARTMENT.

Washington, February 5, 1921

I hereby certify that the annexed is a photostatic copy of the Log of the USS CASTLE covering the period from June 28 to July 8, 1918, inclusive, according to the records

on file in the Bureau of Navigation.

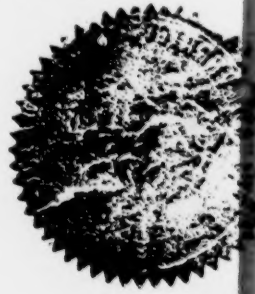
*Thos. Paul Jenkins*  
*Chief of Bureau of Navigation*  
 (Official Title.)

### Office of the Secretary.

I hereby certify that Thomas Washington who signed the foregoing certificate, was at the time of signing Chief of the Bureau of Navigation and that full faith and credit should be given his certification as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this fifth day of February, one thousand nine hundred and Twenty-one

*Joseph Paul Jones*  
 Secretary.







U. S. N. 100

Aug 26 1915

# LOG BOOK

OF THE

U. S. S. CASTINE.

Rate,

COMMANDED BY

COM ANDER WILLIAM C. ASSESSON

, U. S. Navy,

Division,

Squadron,

Fleet,

, 1915 ,

Attached to PATROL SQUADRON BASED ON GIBRALTAR

UNITED STATES ATLANTIC

Commencing June 30th

at MIDNIGHT

and ending July 31st

at MIDNIGHT.

, 1915 ,

1915.



## LOG OF THE UNITED STATES SHIP CASTINE.

AT CANTIERI MARITIMI GIROALTER

83

June 25

William C. McGowan

Summerville, N. C.

[illegible]

## DRILLS AND EXERCISES

Compass		Magnetic		True	
B. H.	Error	Variation	Deviation	Received	Expend
4	Latitude			Received	Expend
5	Longitude			On hand	On hand
6	Latitude			Received	Expend
7	Longitude			On hand	On hand
8	Latitude			Received	Expend
9	Longitude			On hand	On hand
10	Latitude			Received	Expend
11	Longitude			On hand	On hand
12	Latitude			Received	Expend
13	Longitude			On hand	On hand
14	Latitude			Received	Expend
15	Longitude			On hand	On hand
16	Latitude			Received	Expend
17	Longitude			On hand	On hand
18	Latitude			Received	Expend
19	Longitude			On hand	On hand
20	Latitude			Received	Expend
21	Longitude			On hand	On hand
22	Latitude			Received	Expend
23	Longitude			On hand	On hand
24	Latitude			Received	Expend
25	Longitude			On hand	On hand
26	Latitude			Received	Expend
27	Longitude			On hand	On hand
28	Latitude			Received	Expend
29	Longitude			On hand	On hand
30	Latitude			Received	Expend
31	Longitude			On hand	On hand
32	Latitude			Received	Expend
33	Longitude			On hand	On hand
34	Latitude			Received	Expend
35	Longitude			On hand	On hand
36	Latitude			Received	Expend
37	Longitude			On hand	On hand
38	Latitude			Received	Expend
39	Longitude			On hand	On hand
40	Latitude			Received	Expend
41	Longitude			On hand	On hand
42	Latitude			Received	Expend
43	Longitude			On hand	On hand
44	Latitude			Received	Expend
45	Longitude			On hand	On hand
46	Latitude			Received	Expend
47	Longitude			On hand	On hand
48	Latitude			Received	Expend
49	Longitude			On hand	On hand
50	Latitude			Received	Expend
51	Longitude			On hand	On hand
52	Latitude			Received	Expend
53	Longitude			On hand	On hand
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63	Longitude			On hand	On hand
64	Latitude			Received	Expend
65	Longitude			On hand	On hand
66	Latitude			Received	Expend
67	Longitude			On hand	On hand
68	Latitude			Received	Expend
69	Longitude			On hand	On hand
70	Latitude			Received	Expend
71	Longitude			On hand	On hand
72	Latitude			Received	Expend
73	Longitude			On hand	On hand
74	Latitude			Received	Expend
75	Longitude			On hand	On hand
76	Latitude			Received	Expend
77	Longitude			On hand	On hand
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92	Latitude			Received	Expend
93	Longitude			On hand	On hand
94	Latitude			Received	Expend
95	Longitude			On hand	On hand
96	Latitude			Received	Expend
97	Longitude			On hand	On hand
98	Latitude			Received	Expend
99	Longitude			On hand	On hand
100	Latitude			Received	Expend

70-81  
77-75  
58-78  
70-71  
76-74  
73-71  
Flood cocks tested.  
D-12 leakings

P. M.	200	5 by	79	30	73	82	85
1	180	0-1	30.05	30.72	70	"	5
2	186	0-1	30.04	30.00	72	"	5
3	200	0-1	30.05	30.05	74	"	5
4	205	0-1	30.05	30.05	74	"	5
5	205	0-1	30.05	30.05	74	"	5
6	205	0-1	30.05	30.05	74	"	5
7	205	0-1	30.05	30.05	74	"	5
8	205	0-1	30.05	30.05	74	"	5
9	205	0-1	30.05	30.05	74	"	5
10	205	0-1	30.05	30.05	74	"	5
11	205	0-1	30.05	30.05	74	"	5
12	205	0-1	30.05	30.05	74	"	5



REMARKS.

39

passage and until 4:00 A.M.

Moored to #12 buoy, Gibraltar Breakwater, with 3 fms. chain at  
#2 buoy. #2 boiler in use for auxiliary purposes. 12:20 Orchestre returned. At 1:40  
the vessel was in use for auxiliary purposes. 12:20 Orchestre returned. At 1:40

*Plaid*

4 A.M. to 8 00 A.M.

Ensign, U.S.N.R.F.

and berths.

Moored as before. 6:30 ash lighter alongside. 7:30 U.S.S. WINGHAM

*Plaid*

4 A.M. to Meridian.

Ensign, U.S.N.R.F.

Moored as before. 8:00 hoisted Medical Guard flag. 8:25 shoved off  
with party. Ash lighter shoved off. 8:50 magazines inspected and conditions found nor-  
mal. 8:53 U.S.S. WINGHAM stood out. 9:25 mastered divisions at stations - no absentees.  
10:17 U.S.S. WINGHAM stood in. 9:35 E. A. Denton, Sea., U.S.N., sent to R.N. Hospital for eye  
disease. 10:25 dental party returned. 11:00 mine  
and gear tested and found in good condition. Received following stores from U.S.  
at #2. 121 packages commissary stores. Overhauled towing cable.

*Plaid*

4:00 P.M.

Ensign, U.S.N.R.F.

Moored as before. 12:10 U.S.S. LYDONIA stood in. 12:20 U.S.S. YENIA  
in. 12:40 H.N.S. Iceland stood in. 1:00 P. A. Denton, Sea., U.S.N., returned from  
Hospital. 1:30 British OD71 stood in. 1:30 Captain inspected ship. 3:05 H.M.S.

*Find deadbrook*  
Lieut. (jg), N.N.Y.

3 P.M. to 8:00 P.M.

Moored as before. 4:30 H.M.S. Chrysanthemum stood out with observation  
in tow. 4:30 sent liberty party ashore. 5:20 U.S.S. ALCAZAR shifted berths by  
if H.M.R.G. Energetic to #2 buoy. 6:00 sent patrol ashore. 6:25 J.J. Gallagher, B.M.R.  
M., reported on board from U.S. Naval Dispensary, Base Mine, with bag, hammock and all  
necessary transfer papers. 7:30 H.M.S. Chrysanthemum stood in with observation balloon.

*Find deadbrook*  
Lieutenant (jg), N.N.Y.

8 P.M. to Midnight.

Moored as before. 8:55 lighted off #1 boiler. 10:00 liberty party  
patrol returned - no absentees.

*Find deadbrook*  
Lieut. (jg), N.N.Y.

*Find deadbrook*

Examined:

*Find deadbrook*

Lieutenant.

C. S. S. S. S.



## LOG OF THE UNITED STATES SHIP

ATOMIC ROUTE FROM : 'A' to 'B'

05

6

Willie C. Carson, Secretary, U. S. Navy

[illegible]

**DRILLS AND EXERCISES**

Drills and Exercises		Morning	
Company		1	
S. U.		2	
Pilot		3	
Variation		4	
Direction		5	
Received		6	
Expanded		7	
On hand		8	
Received		9	
Expanded		10	
On hand		11	
Received		12	
Expanded		13	
On hand		14	

Magnetic Temperature	
Maximum	91.570
Minimum	-12
	77-75
	90-78
	74-72
	77-75
	91-1/2 76-74

Row	105	7	509857	104	Fast	1-2	25-35	51	85	71	64	Vol	Sp	1
1				104		1-2	25-35	51	85	71	64			
2				106		2-4	25-35	51	85	72				
3				120		1-1	22-28	52	74	58				
4				86		1-2	21-27	46	73	78				
5				176	Call		22-31	85	73	73				
6				195			19-20	83	73	69				
7				182			22-31	73	70	49		bc		
8				126		2-2	22-33	72	74	69				
9				347		0-1	22-28	72	74	87				
10				362	Call		22-31	72	71	65		bc		
11				315			30-00	70	70	85		bc		
12				303	NV	1-2	22-01	73	62	65				







42

AT ON EN ROUTE FROM

of

50 June

William C. Assertion

Commander, U. S. Navy

[illegible][illegible]



## U. S. Navy

## DRILLS AND EXERCISES

1 2 3 4 5 6 7 8 9 10 11 12







# LIST OF OFFICERS

45

is used on board of the U. S. S. CASTINE

, commanded

by Commander William C. Anderson

, U. S. N., during the period covered by this Log Book, with date of  
spring for duty, detachment, transfer, or death, from 1st July, 1918, to 31st July, 1918

NAME	RANK	DATE OF REPORT, ENDING FOR DUTY	DETACHMENT OR TRANSFER	
			Date	Particulars
Anderson	Commander	2-1-17		
Mc	Lieutenant	1-20-18		
Flight	Lieut. (Jg)	7-15-17		
Wood	Lieut. (Jg)	7-15-17		
Wier	PA. Master, N.Y.V.	7-15-17		
Wright	Lieut. (Jg), N.Y.V.	2-26-18		
W. Austin	Asst. Surgeon	4-18-18		
W. Moore	Ensign (T) USN	5-11-18		
W. McLaughlin	Ensign, USNRP	5-12-18		
W. Hall	Ensign, (USNRP)	4-16-18		
W. Jordan	Ensign (T) (M) USN	1-18-18		
W. Bell	Asst. Master, PMA	7-15-18		
W. McCombs	Machinist (T), USN	2-25-18	7-22-18	Ordered to nearest Po. Ship in U.S.

Examined and found to be correct.

*W.C.*  
Lieutenant, U. S. Navy, *Navigation*







## MAIN BATTERY.

GUNS			REMARKS		SHIP AND FIELD MOUNTS		
No.	Cal.	Length in Calibers	Make and Model	Remarks	No.	Type	Remarks
2	4"	40	VI	V Mod. II	2	Pd. II Mod. I	

## SECONDARY BATTERY.

GUNS			REMARKS		SHIP, ROYAL, AND FIELD MOUNTS		
No.	Cal.	Length in Calibers	Make and Model	Remarks	No.	Type	Remarks
6	6-in.	IV			6	Pd. II	
2	.30	I Colt		Automatic Machine Guns	1	Gun	No. 100
2	1-pdr.	V			2	Pd. I-6	
2	.30	I Colt		Automatic Machine Guns	2	Tripod	904-1009
2	.30	III "		"			
2	.30	VI Lewis		"			

## SMALL ARMS.

No.	Kind	Cal.	Type	Remarks
90	Spfd.	.30	1906	
5	K.J.	.30	1898	
33	Rev.	.45	Colt	Automatic.

## TORPEDOES AND MINES.

Torpedo		Torpedo		Torpedo		Torpedo		Torpedo	
Kind	Length	Kind	Length	Kind	Length	Kind	Length	Kind	Length
Mark	Capacity	Mark	Capacity	Mark	Capacity	Mark	Capacity	Mark	Capacity
Number	Pressure	Number	Pressure	Number	Pressure	Number	Pressure	Number	Pressure
1	depth charge projector #100.	9	depth charges, Mark I, Mod. I.	9	percussion detonators.	9	depth charges type (D) and 2 small depth charges type (P).	9	percussion detonators.
2	depth charges (American) Mark II, Mod. I.	2	percussion detonators.	2	depth charges (American) Mark II, Mod. I.	2	percussion detonators.	2	depth charges (American) Mark II, Mod. I.

Examined and found to be correct.

W.B.

H.B.

Lieutenant, U.S. Navy.



# LISTS OF DEVIATION OF THE STANDARD COMPASS NO. 486 **48** ON BOARD THE U. S. S. CASPIRE.

25 June 1916					
REMARKS	DEVIATION	DEVIATION	Checked by Standard	Checked by Standard	DEVIATION
34-07 H					
5-23 Y					
Variation used 12-42 Y					
REMARKS	DEVIATION	DEVIATION	Checked by Standard	Checked by Standard	DEVIATION
0-20 E			4-00 Y	7-30 W	
1-00 E			1-30 Y	7-00 W	
0-30 E			0-30 Y	6-40 W	
0-00			0-00	6-30 W	
0-00			1-00 E	6-00 W	
0-00			0-00	5-00 E	
0-00			1-00 Y	6-00 Y	
0-00			2-00 W	6-30 Y	
0-00			2-15 W	7-00 Y	
0-00			3-00 Y	6-30 Y	
0-40 Y			2-00 Y	5-40 Y	
0-00			1-00 Y	2-00 Y	
0-00			0-00	2-00 E	
0-10 E			1-00 E	6-00 E	
1-00 E			2-00 E	8-20 E	
0-30 E			2-00 E	10-30 E	
2-00 E			3-00 E	11-30 E	
2-00 E			2-30 E	10-00 E	
1-45 E			1-00 E	8-00 E	
1-40 E			0-30 Y	5-00 E	
0-30 E			1-30 Y	2-30 E	
1-00 E			2-30 Y	1-30 Y	
1-00 E			3-30 Y	4-00 Y	
0-30 E			4-30 Y	6-30 W	

## LIST OF INSTRUMENTS USED FOR METEOROLOGICAL OBSERVATIONS, THEIR LOCATION, ETC.

INSTRUMENT	MARK.	NUMBER	LOCATION	DATE OF LAST COMPARISON	COMPARED WITH	ERROR.
WILL BAROMETER	-0-	-0-	-0-	-0-	-0-	-0-
BAROMETER	Short & Mason	505	Passageway to Cabin	Feb. 1916	U. S. Weather Observatory Mobile, Ala.	.09 high
PETER Dry Bulb.	Precision Therm & Inst. Co.	895	Quarterdeck	-0-	-0-	-0-
PETER Wet Bulb.	Precision Therm & Inst. Co.	190	Quarterdeck	-0-	-0-	-0-

Examined and found to be correct.

*W. B. M.*  
Lieutenant, U. S. Navy



49

LOG OF THE UNITED STATES SHIP CASTINE. 49  
AT OR EN ROUTE FROM Gibraltar TO Genoa, Italy July

AT OR EN ROUTE FROM Gibraltar

William C. Agreston

Commander, U. S. Navy, Command

[illegible]

## DRILLS AND EXERCISES

[illegible]



## 05

Ernest W. Wright

Fred Seabrook  
47 East 138th St., N.Y.

G. B. Mauley  
Fign. W. S. N. B. F.

W. D. S. Y. R. P.

*Fred Leabrock*  
Lieut. (j) U. S. N.

1000

Should write.

D. I. Y. Rudakov















REMARKS.

54

From 10:00 until 4:00 A.M.

Steaming as before under both boilers on base course 47° psc. Zigzagging at 120 rpm. Night lookouts stationed and G.P.O. of watch patrolling the ship. Changing and changing speed in patrolling port quarter of convoy. Convoy in fair condition. AV. steam 145; AV. rev. 117.

From 4:00 to 8:00 A.M.

Steaming as before under both boilers on port quarter of convoy at 120 rpm and on base course 47° psc. Zigzagging to maintain position. Watch on deck at 4:50. Stational day lookouts at 4:50. At daylight counted twenty ships in convoy. VC ship astern of station throughout entire watch. All other ships in approximately position. AV. steam 145; AV. rev. 113.6.

From 8:00 to 12:00 Noon.

Steaming as before under both boilers on base course 47° psc; standard zigzagging at various speeds in maintaining position on port quarter of convoy. At 8:15 H.M.S. Jeanette II took up position on starboard bow of convoy. 9:25 held quarters for muster - no absentees. 9:55 W.A. M. 50.30, U.S.N., accidentally scalded right arm, hands and portions of his head while in crew's galley. He received immediate medical attention. Convoy in poor formation. AV. steam 145; AV. rev. 114.

From 12:00 to 4:00 P.M.

Steaming as before under both boilers on base course 47° psc. Zigzagging at cruising speed in maintaining position on port quarter of convoy. At 2:00 speed of convoy changed to 7 knots. At 2:05 H.M.S. Jeanette II took position on port bow of convoy. At 2:15 ships still straggling astern. Remainder of convoy in fair formation. AV. steam 145; AV. rev. 112.2.

From 4:00 to 8:00 P.M.

Steaming as before under both boilers on base course 47° psc. Standard zigzagging at various speeds to maintain position on port quarter of convoy. At 6:00 ordered convoy to change course to N 25 E at 9 p.m. G.M.T. 84. VC and WD in slightly astern of station, other ships approximately in position. AV. steam 146; AV. rev. 117.9.

From 8:00 to 12:00 P.M.

Steaming as before under both boilers on port quarter of convoy on base course 47° psc; standard speed 120 rpm. Steaming at various speeds and zigzagging to maintain position. At 6:13 convoy increased speed to 7-1/2 knots. At 6:30 ship took her station in convoy. VC ship about 200 yards astern of station. Whole of line astern of station. AV. steam 146; AV. rev. 117.7.

From 12:00 to 6:00 Midnight.

Steaming as before under both boilers on a base course 47° psc; standard speed 120 rpm. Zigzagging to maintain position in patrolling port quarter of convoy. At 8:13 darkened ship. At 8:37 sounded general quarters and at 9:00 secured, watch on deck. At 9:17 stationed regular night lookouts. At 10:00 convoy changed course to 145. Convoy in poor formation. AV. steam 145; AV. rev. 105.6.

*W. H. Keenard*  
Lieut. (Jr.), U.S. Navy.

Examined:

*W. H. Keenard*  
Lieutenant,

E. S. R. Hedges.



# LOG OF THE UNITED STATES SHIP CASTINE

55

AT OR EN ROUTE FROM

21st July

TO Genoa, Italy

4 July

William C. Anderson

Commander, U. S. Ship

DATE	TIME	WIND	WAVE	TEMP. AIR	TEMP. SURF	TEMP. DEPT	WINDS IN SIGNAL	CLIFFS
1	10	24	4	20.02	72	-	71	1
2	15	24	4	20.01	72	-	71	1
3	110	24	4	20.00	72	-	71	1
4	102	24	4	20.00	72	-	71	1
5	110	24	4	20.00	72	-	71	1
6	110	24	4	20.00	72	-	71	1
7	110	24	4	20.00	72	-	71	1
8	110	24	4	20.00	72	-	71	1
9	110	24	4	20.00	72	-	71	1
10	110	24	4	20.00	72	-	71	1
11	110	24	4	20.00	72	-	71	1
12	110	24	4	20.00	72	-	71	1

## DRILLS AND EXERCISES

DATE	TIME	WIND	WAVE	TEMP. AIR	TEMP. SURF	TEMP. DEPT	WINDS IN SIGNAL	CLIFFS
1	10	24	4	20.02	72	-	71	1
2	15	24	4	20.01	72	-	71	1
3	110	24	4	20.00	72	-	71	1
4	102	24	4	20.00	72	-	71	1
5	110	24	4	20.00	72	-	71	1
6	110	24	4	20.00	72	-	71	1
7	110	24	4	20.00	72	-	71	1
8	110	24	4	20.00	72	-	71	1
9	110	24	4	20.00	72	-	71	1
10	110	24	4	20.00	72	-	71	1
11	110	24	4	20.00	72	-	71	1
12	110	24	4	20.00	72	-	71	1

DATE	TIME	WIND	WAVE	TEMP. AIR	TEMP. SURF	TEMP. DEPT	WINDS IN SIGNAL	CLIFFS
1	10	24	4	20.02	72	-	71	1
2	15	24	4	20.01	72	-	71	1
3	110	24	4	20.00	72	-	71	1
4	102	24	4	20.00	72	-	71	1
5	110	24	4	20.00	72	-	71	1
6	110	24	4	20.00	72	-	71	1
7	110	24	4	20.00	72	-	71	1
8	110	24	4	20.00	72	-	71	1
9	110	24	4	20.00	72	-	71	1
10	110	24	4	20.00	72	-	71	1
11	110	24	4	20.00	72	-	71	1
12	110	24	4	20.00	72	-	71	1



REMARKS.

56

and until 4:00 A.M.

Steaming as before under both boilers on port quarter of convoy at 110 rpm and on base course 250 psc. Standard speed 120 rpm. Zigzagging to maintain line. Gun cast loose and provided with service ammunition. Night torpedoes defused. Ship darkened. At 1:25 noon rose. First line of convoy in very poor formation. SA ship about 1,000 yards ahead of station. AV. steam 145; av. rev. 136.2.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

P.M. to 8:00 A.M.

Steaming as before under both boilers on port quarter of convoy on base course 250 psc; standard speed 120 rpm. Steaming at various speeds and zigzagging to maintain position. 4:10 watch on deck manned guns. 4:37 secured and stationed regular day watch. 20 ships in convoy at daybreak. SA ship about 200 yards ahead of station. Formation of convoy poor. AV. steam 147.5; av. rev. 144.9.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

P.M. to Meridian.

Steaming as before under both boilers on port quarter of convoy on base course 100 psc; standard speed 120 rpm. Changing speed to maintain position. At 9:00 convoy changed course to 100 psc. At 9:15 slowed to 2/3 speed. At 9:20 went ahead at standard speed. It was mustered at stations - no absentees. Engines inspected and conditions found satisfactory. Convoy in fair formation. AV. steam 145; av. rev. 104.3.

*G. E. Marley*  
Lieut. (SG), U.S. Navy.

P.M. to 4:00 P.M.

Steaming as before under both boilers on base course 100 psc. Standard speed 120 rpm. Zigzagging at various speeds to maintain position on port quarter of convoy. 13 elated French Escort. 12:30 SA ship despatched to Marselles. 1:30 paid crew money. 2:50 2/3 speed ahead. 2:56 standard ahead. 2:57 speed of convoy 7 knots. 3 M, W, and W ships about 1/2 mile astern of stations. Other ships approximately in line. AV. steam 146; av. rev. 107.9.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

P.M. to 6:00 P.M.

Steaming as before under both boilers on port quarter of convoy on base course 100 psc; standard speed 120 rpm. Steaming at various speeds and zigzagging to maintain position. 5:25 convoy increased speed to 7-1/2 knots. US ship about 400 yards astern of line. Whole of B line out of position. Remainder of convoy approximately in position. AV. steam 146; av. rev. 100.65.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

P.M. to 8:00 P.M.

Steaming as before under both boilers on base course 100 psc. Standard speed 120 rpm. Zigzagging and changing speed to maintain position on port quarter of convoy. AV. steam 146; av. rev. 114.9.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

P.M. to Midnight.

Steaming as before on port quarter of convoy at speed 115 rpm and on base course 100 psc. Standard speed 120 rpm. Zigzagging to maintain position. 8:33 SA ship. Sounded general quarters at 8:52 and secured. At 9:10, watch on deck remained at the guns. At 9:40 stationed night lookouts. At 11:30 convoy altered course to 250 psc. 12:45 convoy altered course to 560 psc. All ships in position at midnight. AV. steam 147.5; av. rev. 115.2.

*W. B. D. Long*  
Lieut. (SG), U.S. Navy.

Examined:

*W. B. D. Long*

Lieutenant, U. S. Navy.



Commander. U. S. Navy.

76	2	160.20	Var.	5'	1	20.24	74	69	67	70	b <sup>c</sup>	5'
77		165650	"	"	1	20.24	73	69	67	70	b <sup>c</sup>	"
77		162359	"	"	0-1	20.24	72	69	67	70	b <sup>c</sup>	"
74	-	155700	"	"	0-1	20.24	73	69	67	70	b <sup>c</sup>	"
71	9	112395	1000	0.1 m	-	20.22	75	68	67	70	b <sup>c</sup>	"
58	2	174045	10	"	4	20.22	75	68	67	70	b <sup>c</sup>	"
48	5	154370	70	"	-	20.24	73	68	57	70	b <sup>c</sup>	"
45		157896	70	"	-	20.24	73	68	57	70	b <sup>c</sup>	"
70		161682	70	"	-	20.24	74	68	57	70	b <sup>c</sup>	"
70		168635	340	"	-	20.24	76	66	56	70	b <sup>c</sup>	"
70		170205	340	5'	0-1	20.26	76	66	56	70	b <sup>c</sup>	"
70		174325	348	5'	0-1	20.26	76	66	56	70	b <sup>c</sup>	"



## REMARKS.

58

Steamers and until 4:00 A.M.

Steamer as before under both boilers; on port quarter of convoy at 55° psc; standard speed 120 rpm. Steaming at various speeds and zigzagging position. 12:38 sighted convoy ahead headed S.W. 12:42 convoy lighted navigation lights and started blowing whistles. Ships in port column turned to port followed by reports of collisions. Captain took the conn. 12:45 made emergency full speed to keep from collision. 12:46 made standard speed and steering various courses and speeds investigated. 2:10 S. and Italian S.S. Napoli (VA ship and Commodore) down by the head in sinking position. 2:10 S. and Italian S.S. Napoli (VA ship) abandoned and low in the water on port side. Italian Auxiliary Tugs standing by Napoli. 2:10 lowered whaleboat with list. 2:10 U.S. in charge to investigate condition of S.S. Otto Sverdrup. Port Captain and 2 small boats and brought them aboard CASTINE. Sent Captain, 1st Mate, 1st and 3rd Engineer and 2 seamen of S.S. Otto Sverdrup back to ship to stand by her. Following members of crew aboard CASTINE: Axel V. Jonsson, Boatswain. (Swede), Axel Jacobson. 2nd Engineer. 1st, Albert Christensen, Chief Mate (Nor.), Ivan Ring, Sailor. (Swede), Eric Janstén, 2nd Mate (Swede), Erling Amundt, Sailor. (Nor.), Leo Andersen, Sailor. (Nor.), Thomas Coris, 3rd Engineer. (Swede), Salvador Dileguis, Sailor. (Spanish), Howard Sherwood, Cook. (American), 1st Engineer. (Spanish), Edmundo Dileguis, 1st Engineer. (Swede), Emanuel Nordstedt, Fireman. (Swede), Hjalmar Sandgren, 2nd Engineer. (Nor.), Donkey Man, (American), Francisco Maldonado, Mess Boy. (Swede), Axel Lindqvist, Fireman. (Swede), Elias Tranberg, Fireman. (Mexican), Toal 1st Engineer. (Mexican), Octavio Ruiz, Engine Boy, (Cuban), Francisco Maldonado, Mess Boy. (Swede), Herbert Hellewell, Signalman. (British - R.N. Navy). 2:52 Italian S.S. Napoli and S.S. exchanged signals by megaphone with Italian Auxiliary Tugs. Crew of Napoli and S.S. Italian Auxiliary Tugs proceeded to Speria, Italy. Norwegian S.S. Otto Sverdrup struck in forward bunkers - port side. Engine room and #2 hold flood dead; still on even keel. CASTINE standing by. Av. steam 147.51 av. rev. 70.5.

*Food handed*  
Lieut. (Jg), U.S.N.V.

4:00 A.M. to 6:00 A.M.

Standing by VB ship, Otto Sverdrup as before under both boilers. (Siro) - by in vicinity at 120 rpm. At 4:40 stationed regular day lookouts. 5:00 sighted 4 submers, 2 badly damaged. At 5:30 sent a repair party to one. Took 4 chasers in tow. At 5:30 Trawler TRAC went to assistance of S.S. Otto Sverdrup and took her in tow. Av. steam 145, av. rev. 81.

*Food handed*  
Lieut. (Jg), U.S. Navy.

6:00 A.M. to Meridian.

Steaming as before in vicinity of S.S. Otto Sverdrup in Lat. 45-12-00 Long. 8-04-00 E. 8:30 magazines inspected and conditions found normal. Flood cocks tested and 32 found leaking. 8:35 course 66° psc. Av. steam 145; av. rev. 84.8.

*Food handed*  
Lieut. (Jg), U.S.N.V.

Meridian to 4:00 P.M.

Steaming as before. Standard speed 120 rpm. Captain at the conn. 1:55 Master took the conn. 3:40 lowered 1st M.B. 3:53 showed off crew of S.S. Otto Sverdrup prepared to ship. Lieut. (Jg) observed in charge of boat. Cast loose the 4 sub chasers and in tow fast to S.S. Otto Sverdrup. Av. steam 146; av. rev. 75.1.

*Food handed*  
Lieut. (Jg), U.S. Navy.

4:00 P.M. to 6:00 P.M.

Moved to preparing to take S.S. Otto Sverdrup in tow. Both boilers in steam 145; av. rev. 65.

*Food handed*  
Lieut. (Jg), U.S. Navy.

6:00 P.M. to 8:00 P.M.

Moved to as before in vicinity of S.S. Otto Sverdrup. Captain at the conn. of Italian Tug 06 informed the Commanding Officer that, owing to small power plant equipment, they would not be able to take the damaged ship in tow. They were ordered to petrol in vicinity. At 7:00 completed preparations for towing S.S. Otto Sverdrup. 7:10 Trawler TRAC proceeded toward S.S. Otto Sverdrup, heading South. At 7:30 1st M.B. returned to the ship and was hoisted. Gradually increased speed to 65 rpm and set base course psc. Av. steam 145, av. rev. 22.

*Food handed*  
Lieut. (Jg), U.S. Navy.

*Food handed*  
Lieut. (Jg), U.S. Navy.

*Food handed*  
Lieut. (Jg), U.S. Navy.

*Food handed*  
Lieut. (Jg), U.S. Navy.



ADDITIONAL SHEET.

59

U. S. NAVY.

Date, 5 July 1918.

10 p.m. to Midnight.

Steaming as before under both boilers on base course 70° pos at 65 rpm  
 with S.A. Otto Sverdrup. Captain at the con. 8:23 darkened ship. 8:40 made 70 rpm and  
 at that standard speed. 8:43 sounded general quarters. 9:04 secured, watch on deck remain-  
 ing at pos. 9:05 changed base course to 548° pos, heading for Omaglia, Italy. 9:50 stationed  
 at eight lookouts. O.O.D. took conn. 11:57. stem 145; 11:57. rev. 70.

*Fred Lubbock.*

Lieut. (jg), U.S.N.

23

Examined:

*W. H. H.*  
 Lieutenant,  
 U. S. N., New York.



09

AT OH EN ROUTE FROM GIBRALTAR.

to Genoa, Italy 6 July

William O. Aserson

Commander

[illegible]

C. No. 2.		Campus Standard		Morning	
1/ Latitude	43-49-00 N	8.71	SS	1	1
2/ Longitude	8-2-00 E	Error	10-30 W	2	2
3/ Latitude	43-51-00 N	Variation	10-30 W	3	3
4/ Longitude	8-24-00 E	Deviation	0-00	4	4
5/ Latitude		Received	12.3	5	5
6/ Longitude		Expended	159.5	6	6
7/ Latitude		Received		7	7
8/ Longitude		Expended		8	8
9/ Latitude		On hand		9	9
10/ Latitude		Disbursed			
11/ Longitude		Received	50.96		
12/ Latitude		Expended	27.00		
13/ Longitude		On hand	186.50		
MAXIMUM TEMPERATURES:					
Maximum	84.02				
Minimum	71.2				
	71.9				
	76.74				
	81.79				
	12-1/2				

[illegible]



61

and until 4:00 A.M.

Steaming as before under both boilers on a base course 348° pos; main speed 70 rpm. Towing Otto Sverdrup and 4 sub chasers. Night lookouts stationed and A of watch patrolling the ship. At 3:15 found two sub chasers missing. AV. steam 150. At 70.

May 26 8:00 AM.

Steaming as before under both boilers on base course 344° per and at 10 knots towing Otto Sverdrup and two motor launches. At 4:20 watch on deck named the weather. At 4:44, at 5:06 sighted land on port bow. D5 picked up one of the motor launches and at 6:00 made her fast to the tow. At 7:35 D6 ran a line to the Otto Sverdrup and assisted in towing. A-6 (fig. 145) av. rev. 71.1.

all to Meridian.

Steaming as before under both boilers on base course 340° psc; standard  
at 9 PM; towing Otto Sverdrup and 3 sub chasers with assistance of tug D6. 8-25 went  
all ahead and cut towing line. 9:30 slowed to standard speed, 120 rpm. Inspected  
springs; conditions normal. 9:50 Italian Hydroplane stood out. 9:17 stopped both engines,  
towed dinghy to get our 6" howitzer from chase. Tug D6 proceeding into Onealla with  
S. Otto Sverdrup and Aug D5 followed towing sub chasers. 9:17 Captain took com. 9:45 took  
triband and hoisted dingy. 9:47 went ahead standard speed, 140 rpm. O.D. took com.  
as based for Genoa on base course 64° psc. 10:45 received all close by. Forward guns  
isolated sub chaser with seaplane in tow bearing 149° psc. 11:00 changed course to  
investigate all time 0706. 11:10 sighted sub chaser on port bow. 11:15 sighted  
after towing seaplane on starboard bow. 11:50 started searching in neighborhood of allie.  
After 143.7; av. rev. 116.4.

11:00 to 4:00 P.M.

Steaming singly as before under both boilers on various courses and speeds tabulating vicinity of an allo. Standard speed 135 rpm. At 12:55 sounded general quarters signaled at 1:27 watch on deck remaining at guns. At 3:04 stationed regular day lookouts 1st 2nd course at 430 ppc and headed for Genoa. AV. Steam 145; av. rev. 134.7. At 4:00 (and base course to 100° ppc

8.4. to 6:00 P.M.

Steaming as before under both boilers on base course 10° psc, standard  
and 125 rpm, speed 14.5 rpm. At 4:19 headed for harbor of Genoa on various courses. At 5:12  
went at entrance of swept channel and changed course to 10° psc steaming down channel  
the pilot came aboard and. took over the conn. Navigator at the conn. At 5:30  
the MC: av. rev. 137.6. At 5:30 passed breakwater entrance. Av.

11:00:00 AM

Standing up the harbor. At 6:05 moored ship with 55 fathoms of chain on  
lost anchor and stern lines to Italian steamer. Ship's draft 12'5" fwd., 14'5" aft. At  
7:10 left the ship. At 8:45 liberty party and patrol sent ashore. At steam 142.5.  
M., 146.

L. J. to Midnight.

Moored as before. At 8.30 Liberty party returned, nine absentees. At 9.15, five A.O.I., Lemite, L.C., Saa.22, and Ortscheid, J., Co. returned on the 10.15. At 10.25 Lyons W.P. S.C.I.C. returned two hours and twenty minutes late. At 10.40 Liberty party returned.

Endign U.S.M.R.P.

**Examined:**

*E. S. Y. Kurihara*



**CASTINE.**

vo Gibraltar

Commander, U. S. Navy

G. M. T.		Longitude		Latitude		Current		Drift		MAGNETIC TEMPERATURES:		Maximum		Minimum		D3		D12		D13		D19		D21		D22		D23		D24		D25		D26		D27		D28		D29		D30		D31		D32		D33		D34		D35		D36		D37		D38		D39		D40		D41		D42		D43		D44		D45		D46		D47		D48		D49		D50		D51		D52		D53		D54		D55		D56		D57		D58		D59		D60		D61		D62		D63		D64		D65		D66		D67		D68		D69		D70		D71		D72		D73		D74		D75		D76		D77		D78		D79		D80		D81		D82		D83		D84		D85		D86		D87		D88		D89		D90		D91		D92		D93		D94		D95		D96		D97		D98		D99		D100	
4	Latitude	44-13-00 N	4	Longitude	8-24-00 E	4	Latitude	45-35-00 N	4	Longitude	8-00-00 E	Current	10-4	Drift	0-0	Maximum	Minimum	D3	85-61	D12	82-80	D19	84-82	D21	75-73	D12-1/2	86-79	D13	80-79																																																																																																																																																										

Compass		Standard		Error		Variation		Deviation		Received		On hand		Received		On hand		Distilled		Received		Expended		On hand	
8. H	221	2-00	N	2-00	N	11-00	W	2-00	W	7.6	tons.	150.7	"	Received	Expended	On hand	Distilled	Received	Expended	On hand	Received	Expended	On hand		

Morning		Afternoon		Drift		Direction		Distance		Time		Weather		Wind		Sea		Sky		Temperature		Barometer		Humidity		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction		Force		Direction	
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P.	1	2	3	4	5	6	7	8	9	10	11	12
103	4	527375	190	30.03	78	77	74	76	74	30.04	78	74
96	1	528066	190	30.03	78	77	74	76	74	30.04	78	74
105	1	529393	183	30.03	78	77	74	76	74	30.04	78	74
112	2	545030	242	30.01	80	77	74	76	74	30.04	78	74
103	5	552290	242	30.00	81	76	73	77	72	30.04	78	74
102	6	558305	242	30.00	81	76	73	77	72	30.04	78	74
97	9	564330	221	30.00	81	75	72	72	72	30.04	78	74
106	7	570765	221	30.00	81	75	72	72	72	30.04	78	74
106	4	577130	221	30.03	78	77	74	76	74	30.04	78	74
110	6	593775	257	30.04	76	74	72	72	72	30.04	78	74
109	5	596320	257	30.04	76	74	72	72	72	30.04	78	74
106	6	556750	257	30.04	76	74	72	72	72	30.04	78	74















# LOG OF THE UNITED STATES SHIP CASTER, 66

AT OR EN ROUTE FROM ... TO ... 8 July

William C. Assenden, Commander, U. S. Navy

DATE	WIND	BAROMETER	TEMPERATURE	WIND DIRECTION	WIND VELOCITY	WIND FORCE	WIND EFFECT
1	SW	30.02	74	SW	74	74	74
2	SW	30.01	73	SW	73	73	73
3	SW	30.00	73	SW	73	73	73
4	SW	30.00	73	SW	73	73	73
5	SW	30.02	73	SW	73	73	73
6	SW	30.02	73	SW	73	73	73
7	SW	30.02	73	SW	73	73	73
8	SW	30.02	73	SW	73	73	73
9	SW	30.02	73	SW	73	73	73
10	SW	30.02	73	SW	73	73	73
11	SW	30.02	73	SW	73	73	73
12	SW	30.02	73	SW	73	73	73

## DRILLS AND EXERCISES

DATE	WIND	BAROMETER	TEMPERATURE	WIND DIRECTION	WIND VELOCITY	WIND FORCE	WIND EFFECT
1	SW	30.02	74	SW	74	74	74
2	SW	30.01	73	SW	73	73	73
3	SW	30.00	73	SW	73	73	73
4	SW	30.00	73	SW	73	73	73
5	SW	30.02	73	SW	73	73	73
6	SW	30.02	73	SW	73	73	73
7	SW	30.02	73	SW	73	73	73
8	SW	30.02	73	SW	73	73	73
9	SW	30.02	73	SW	73	73	73
10	SW	30.02	73	SW	73	73	73
11	SW	30.02	73	SW	73	73	73
12	SW	30.02	73	SW	73	73	73

DATE	WIND	BAROMETER	TEMPERATURE	WIND DIRECTION	WIND VELOCITY	WIND FORCE	WIND EFFECT
1	SW	30.02	74	SW	74	74	74
2	SW	30.01	73	SW	73	73	73
3	SW	30.00	73	SW	73	73	73
4	SW	30.00	73	SW	73	73	73
5	SW	30.02	73	SW	73	73	73
6	SW	30.02	73	SW	73	73	73
7	SW	30.02	73	SW	73	73	73
8	SW	30.02	73	SW	73	73	73
9	SW	30.02	73	SW	73	73	73
10	SW	30.02	73	SW	73	73	73
11	SW	30.02	73	SW	73	73	73
12	SW	30.02	73	SW	73	73	73



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**Excluded:**

*E. B. M.*



No. 4.

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Page 27

COMMUNICATION RECORD			
United States Ship <u>CASPER</u> 20 June 1918			
TIME	FROM	TO	TEXT
A.M. 11:30	IM	LD	Mail will close at Naval Base at 6 p.m. to-day. <i>Habel</i> Ensign. U.S.N.R.Y. ps
P.M. 3:30	US Admiral	LD	Mail will close at Naval Base at 6 a.m. Saturday instead of 6 p.m. to-day. <i>Fred Leabont</i> Lieut. (JG), N.H.Y. fs
4:20	"	LD	Send officer to flag office for confidential papers.
4:20	Chief of Staff	LD	Time of convoy conference tomorrow, Saturday, has been altered from 1600 GMT to 1700 GMT. <i>Fred Leabont</i> Lieut. (JG) N.H.Y. fs
			EXAMINED: <i>W. E. H.</i> Lieutenant, U.S. Navy, Navigator.
			APPROVED: <i>W. E. H.</i> Commander U.S. Navy, Commanding.

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COMMUNICATION RECORD				
United States Ship <u>CAPTAIN</u> 29 June 1918.				
TIME	FROM -	TO -	REF. NO.	TEXT
A.M. 9:00	LD	S.M.O.		Request permission to leave harbor for target practice.
11:20	LD	CDPT		Course will be East.
11:35	LD			Finished. Thank you.
11:40	LD	Wind Mill Hill Sta.		R.O.4.
11:50	Wind Mill Hill Sta.	LD		Proceed to #15 buoy.
P.M. 1:40	Tower	LD		<p><i>Fred Schubert.</i> Lieut. (jg), R.N.V.</p> <p><i>Proffgen</i> Ensign (jg), U.S. Navy.</p> <p>C.O.S. to Janette II and CASTLE. Times of commences have been altered. They now read 1600 and 1700 S.T. to-day. Saturday.</p>
EXAMINED:				<p><i>H. K. H.</i> Lieutenant, U.S. Navy, Navigator.</p>
APPROVED:				<p><i>W. L. Johnson</i> Commander, U.S. Navy, Overseeing.</p>



COMMUNICATION RECORD				
United States Ship <u>CASLINE</u> , 30 June 1918.				
TIME	FROM --	TO --	REF. NO.	TEXT
A.M.				
10:25	LD	Tower		To S.M.O.:-- S.O. 520 received. A Permission to leave harbor.
10:45	LD	Jeanette II		Shall I get press.
10:47	LD	"		Yes, please.
11:10	LD	Convoy		Z X M
11:27	Comodore	"		Alter course to 155°.
11:35	"	"		Alter course to 129°.
11:44	"	"		Z X R
11:50	Jeanette II	"		Z T G
11:55	LD	SA ship		O.
				<i>Matigener</i> Ensign (T), U.S. Navy.
P.M.				
12:00	LD	TA ship		O.
12:20	LD	TB ship		O. You are a ten knot ship. Close up to 300 yds. of your leader.
12:30	LD	TB ship		Please repeat your last signal.
				Signal was for TB ship to close up.
12:31	M.L. 413	LD		O.
12:32	LD	M.L. 413		O.
12:45	LD	UB ship		O.
1:05	LD	TB ship		O.
1:15	LD	TB ship		O.
1:15	Comodore	Convoy		O.
1:50	"	"		O.
				we'll done.
				Z X S.
				D. - Z W E - D W
				<i>G. F. Macloy</i> Lieut. (Jr.), U.S.N.R.F.
6:00	"	"		S 65 E.
6:05	"	"		S 88 E 9 p.m.
				<i>Indefatigable</i> Lieut. (Jr.), N.N.V.
8:00	"	"		Rendezvous for July 1st and 2nd - Lat. 35-50, Long. 2-00 West; Lat. 36-50, Long. 2 East.
				O.
8:10	"	"		O.
8:45	LD	SA ship		Both your bow lights are burning.
8:48	Jeanette II	LD		Thank you.
8:53	LD	Jeanette II		<i>G. B. Howard</i> Lieut. (Jr.), U.S. Navy.
EXAMINED:				<i>Edy</i> Lieutenant, U.S. Navy, Navigator.
APPROVED:				<i>W. H. Brown</i> Commodore, U.S. Navy, Commanding.



COMMUNICATION RECORD			
United States Ship CASTINE, 1 July 1918.			
TIME	FROM	TO	TEXT
A.M. 9:45 11:40	LD Jeanette 11	TS ship Convey	O. O.  Ensign, U.S.N.R.F.  <i>P. C. Mailey</i>
P.M. 2:33 3:50 4:00	Commodore " "	Convey " "	Z. X. R. North 78 East. North 63 East.  <i>Chapel</i> Ensign, U.S.N.R.F.
6:06 6:22	" "	" "	North 85 East at 9 p.m. Reckonings will be made in Lat. 38-00, Long. 5-40 W.  <i>W. B. Brown</i> Lieut. J.G., U.S. Navy <i>Franklin</i> Lieut. J.G., U.S. Navy
8:05	Jeanette 11	" "	Z.M.K.  <i>Franklin</i> Lieut. J.G., U.S. Navy
EXAMINED:			<i>Franklin</i> Lieutenant, U.S. Navy, Navigator.
APPROVED:			<i>W. B. Brown</i> Commander, U.S. Navy, Commanding.



N. NAV. 14

## COMMUNICATION RECORD

United States Ship CASTLE 2 July 1918.

TIME	FROM	TO	REF. NO.	TEXT
A.M.				
5:50	LD	UA ship		O.
6:00	LD	UB ship		O.
6:05	LD	VB ship		O.
6:15	Commodore	Commodore		Est.
6:17	LD			O.
11:02	LD	VB ship		Z R H
11:05	LD	VB ship		Z R H
11:07	VB ship	LD		I am going full speed.
				<i>P. Stahl</i> Ensign, U.S.N.R.F. J4
P.M.				
1:25	LD	SA ship		Z R H
3:25	Commodore	Commodore		Z R H
5:48	"	"		Ensign (R), U.S. Navy.
5:55	"	"		Course will be altered to N 70 E at 7 p.m.
				O.M.T.
				Course will be altered to N 47 E at 9 p.m.
				G.M.T.
				<i>P. Stahl</i> Lieut. (Jg), U.S. Navy. 808
6:20	"	"		Z X A Lat. 41-00 North long. 7-15 East.
6:40	"	"		Z V E
7:03	"	"		Z X S
7:03	"	"		D - Z V S
				<i>P. Stahl</i> Ensign, U.S.N.R.F. J4
				EXAMINED: <i>H. K.</i> Lieutenant, U.S. Navy, Navigator.
				APPROVED: <i>W. Brown</i> Commander, U.S. Navy, Commodore.

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COMMUNICATION RECORD			
United States Ship CASTINE. 3 July 1918.			
TIME	FROM -	TO -	TEXT
A M. 7:40 7:43	Commodore "	Convoy "	Z W E D space Z W E  O.  Lieut. (Jg), U.S. Navy. <i>Arnold Wright</i> Ensign (Jg), U.S. Navy. <i>Matzinger</i>
10:23	LD	SA ship	
P. M. 1:55 2:15	Commodore LD	Convoy 7th ship	Z X R 7th space O.  N 23 E. My wireless condenser having broken down will you take in any signals that might be made to me and pass me visually in daylight any allies you receive. <i>G. E. Marley</i> Ensign, U.S.N.R.F.
5:50 6:00	Commodore Jeanette II	Convoy LD	Z X S Following allies just received - 4240 - 0808 H-1308. <i>And Lockbrook</i> Lieut. (Jg), N.H.Y.
6:12 6:20	Commodore LD	Convoy Jeanette II	Z W E - L P T <i>W. H. Keenwood</i> Lieut. (Jg), U.S. Navy.
8:35	Jeanette II	Convoy	EXAMINED. <i>W. H. Keenwood</i> Lieutenant, U.S. Navy, Navigator.
			APPROVED. <i>W. H. Keenwood</i> Commander, U.S. Navy, Commanding.



COMMUNICATION RECORD				
United States Ship CASTINE. 4 July 1918.				
TIME	FROM	TO	REF. NO.	TEXT
A.M. 4:40	Jeanette II	Convoy		O. <i>End Leabrook</i> Lieut. (jg), N.M.V.
8:45	"	LD		Many happy returns for the day.
8:50	LD	Jeanette II		Thank you.
9:08	Jeanette II	Convoy		Course will be altered to N 10 E.
11:30	"	LD		My W.T. receiving gear is all right so please resume usual routing getting press when you can.
P.M. 2:57	Commodore	Convoy		<i>G.B. Mackay</i> Ensign, U.S.N.R.S.
5:25	"	"		<i>End</i> Ensign, U.S.N.R.S.
5:45	LD	TB ship		<i>End Leabrook</i> Lieut. (jg), N.M.V.
6:20	Commodore	Convoy		We probably meet destroyers to-night.
6:30	"	"		At 10:30 p.m. alter course to N 33 E magnetic.
6:35	"	"		Change course to N 45 E at 11 p.m.
				<i>End</i> Lieut. (jg), U.S. Navy.
EXAMINED.				
<i>W. J. [Signature]</i> Lieutenant, U.S. Navy, Navigator.				
APPROVED.				
<i>W. J. [Signature]</i> Commander, U.S. Navy, Command Log.				



## COMMUNICATION RECORD

75

United States Ship CASTINE.

5 June 1918.

TIME	FROM	TO	REF. NO.	TEXT
A.M.				
2:50	LD	Tocra		Were there any other ships in collision? Have you made report? Have you the Commodore aboard?
2:52	Tocra	LD		Yes.
2:53	LD	Tocra		We will take the Asia in tow if you will stand by.
2:54	Tocra	LD		We received orders to proceed to Spezia. Did you receive telegram?
2:59	LD	Tocra		No.
3:43	Tocra	LD		Commodore ship sunk, crew saved. Will you look for motor launches which were on board? Do you know if ship on your starboard bow is damaged?
3:45	LD	Tocra		VB ship - Engine room and #2 hold flooded. Think she can be saved. Have sent for tugs.
3:49	Tocra	LD		Thank you. Good-bye.
4:46	LD	Otto Svendrup		<i>Frank Leach</i> Lieut. Jg., N.M.V.
7:00	Otto Svendrup	LD		We will not take you in tow, but will stand by you.
7:10	Otto Svendrup	LD		X.U. - V.H.I. - O.M.H. - V.X.P. - V.S.P.
7:15	LD	French Trawler		B.P.J.C.
8:00	LD	"		F.C.H. - W.T.E. <i>Frank Leach</i>
9:30	LD	"		Lieut. Jg., U.S. Navy.
11:00	Otto Svendrup	LD		N. 65 E.
11:10	LD	Otto Svendrup		Request send message for help.
11:25	Otto Svendrup	LD		Message sent; tugs expected. Are you making anymore water?
				No. Thank you.
P.M.				
3:10	LD	French Trawler		<i>Frank Leach</i> Ensign, U.S.N.R.I.
3:25	French Trawler	LD		Go as fast as you can.
3:43	"	LD		Impossible. Cannot go faster. Cannot get sufficient steam.
5:20	Otto Svendrup	LD		No draught.
5:38	Fr. Trawler	LD		<i>Matzenner</i> Ensign, U.S. Navy.
5:40	LD	Fr. Trawler		Captain to Commanding Officer: - Do you think it is better to put us ashore in Oneglia than to Spezia?
7:21	Fr. Trawler	LD		Request you show your distinguishing flags for intelligence purposes.
7:30	LD	Fr. Trawler		<i>G. E. Morley</i> Ensign, U.S.N.R.I.
7:33	Fr. Trawler	LD		Cannot get sufficient steam. Recommend return base.
9:05	LD	Otto Svendrup		Proceed to base.
9:06	Otto Svendrup	LD		Thank you.
9:23	Tug D6	LD		We are changing course for Oneglia.
9:24	Tug D6	LD		Thank you, Sir.
9:26	Tug D6	LD		Are you going to Oneglia?
9:26	Tug D6	LD		Yes.
9:50	LD	Otto Svendrup		Thank you.
11:13	Otto Svendrup	LD		You are showing lights. Turn out your lights.
				Oh, alright.
				Steer more carefully after me.
				Steer more carefully after me.
				Being our best, sir.
				<i>Frank Leach</i> Lieut. Jg., N.M.V.
				EXAMINED.
				<i>Frank Leach</i> Lieutenant, U.S. Navy
				NAVIGATOR.
				APPROVED: <i>Frank Leach</i> Commander, U.S. Navy



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COMMUNICATION RECORD			
United States Ship CASTLE, 5 July 1918.			
TIME	FROM -	TO -	TEXT
6:55	Otto Sverdrup LD		Will you kindly take us nearer shore as the ship is gradually going down.
8:10	Tug 26	LD	Head for Oeslie. The port is in line with the two chimneys.
8:11	LD	Tug 26	Very well.
EXAMINED:			<i>Franklin D. Roosevelt</i> Lieut. (JG), U.S. Navy. <i>Franklin D. Roosevelt</i> Lieut. (JG), U.S. Navy.
APPROVED:			<i>W. H. S. M.</i> Commander, U.S. Navy. Commanding.

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COMMUNICATION RECORD				
United States Ship CASTINE. 7 July 1918.				
TIME	FROM -	TO -	REF. NO.	TEXT
A.M.				
10:32	Jeanette II	LD		When do you expect to sail?
10:36	LD	Jeanette II		Reply - In half an hour.
11:36	LD	"		What station shall I keep? Shall I take in press?
11:47	Comodore	Convoy		Z X S
11:48	Jeanette II	LD		C position more later. Yes, please.
				<i>G. E. Mailay</i> Ensign, U.S.N.R.F.
P.M.				
12:20	Comodore	Convoy		O. Keep within 500 yards.
12:35	LD	SA ship		All right, Sir.
12:35	SA ship	LD		Alger's anchor apparently fouled with obstruction
12:50	LD	Jeanette II		on bottom when we left.
12:55	Jeanette II	LD		Please take C position. S takes D. Alger takes B.
				Coropsie takes G. Ascend orders to escort to read.
				CASTINE and Glitte de Cagliari to stand by the
				first two disabled ships.
				Z T B
1:40	Comodore	Convoy		O.
1:50	"	"		S 36° W.
2:05	LD	Jeanette II		Has cone and burgee on destroyer the meaning given
3:15				by Mediterranean signal order number seven, meaning
				submarine to Northwest
3:20	Comodore	Convoy		S 62° W.
3:25	Jeanette II	LD		What you take for cone and burgee I think is helm
				signals.
				<i>Prothglumner</i> Ensign (U.S. Navy)
4:00	Comodore	Convoy		O.
5:05	LD	TS ship		TD - Z E N
				<i>G. E. Mailay</i> Ensign U.S.N.R.F.
6:10	Comodore	Convoy		S 52° W.
6:35	LD	SA ship		SA - O.
6:48	Comodore	Convoy		Z T V - Scde K Z - A.L.V.
				<i>Fred Halbrook</i> Lieut. (Jg), U.S. Navy.
				EXAMINED:
				<i>H. E. H.</i> Lieutenant, U.S. Navy, Navigator.
				APPROVED:
				<i>W. H. Aspinwall</i> Commander, U.S. Navy, Commanding.

(THIS PAGE TO BE SENT TO BUREAU OF NAVIGATION MONTHLY WITH LOG SHEETS)



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COMMUNICATION RECORD				
United States Ship CASTINE. 6 July 1918.				
TIME	FROM	TO	REF. NO.	TEXT
A.M. 4:45	Jeanette 11	Convey		0. <i>Ford Sealbrook.</i> Lieut. (J.S.), U.S.N.
8:46	Commodore	"		N 60° W.
9:38	"	"		S 72° W.
10:00	"	"		0
10:05	"	"		S 40° W.
P.M. 4:25	LB	GA ship		0.
4:30	LB	TA ship		0.
4:45	LD	VB ship		0.
5:20	LD	WB ship		0.
5:54	Commodore	Convey		S 54° W.
6:32	"	"		Change course at 5 p.m. G.M.T. to S 70° W. <i>W. H. H. H.</i> Ensign, U.S. Navy.
EXAMINED:				<i>W. H. H. H.</i> Lieutenant, U.S. Navy Navigator.
APPROVED:				<i>W. H. H. H.</i> Commander, U.S. Navy, Commanding.



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COMMUNICATION RECORD				
United States Ship			CASTIME 9 July 1918	
TIME	FROM --	TO --	REF. NO.	TEXT
A. M. 6:10 6:12 7:05	LD LD Commodore	7th ship Xa ship Convey		<p>O. O. 5 36° W.</p> <p><i>G. E. Marley</i> Lieut (jg) U.S. Navy. ghs</p> <p>2 W E Please signal me the Lat. and Long. at which you think convey altered course at 2230 and 2300 on night of fourth. Also position where collision occurred and Napoli sunk. Position 10.50 P.m. July 4th - 4300 N - 0750 E. Position 11 P.m. July 4th - 4304 N - 0752 E. Napoli in collision 11:42 p.m. July 4th and sunk at 1:52 a.m. July 5th in position 4308 N - 0757 E.</p> <p><i>G. E. Marley</i> Ensign U.S.N.R.F.</p> <p><i>G. E. Marley</i> Ensign U.S.N.R.F.</p> <p>2 TU 9 p.m. 5 41° W. O.</p> <p>EXAMINED <i>H. Est.</i> Lieutenant U.S. Navy. Navigator.</p>
9:15 11:20	" Jeanette 11	LD "		
11:45	LD	Jeanette 11		
P. M. 6:32 7:45	Commodore "	Convey "		<p>APPROVED <i>W. B. Brown</i> Commander U.S. Navy. Commanding.</p>

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(THIS PAGE TO BE SENT TO BUREAU OF NAVIGATION MONTHLY WITH LOG SHEETS)

No. 5.



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N. NAV. 78

## COMMUNICATION RECORD

United States Ship CASLINE 10 July 1918

TIME	FROM	TO	REF. NO.	TEXT
A.M.				
1:09	LD	TB ship		Close up to your proper station behind TA ship. You are astern of SA ship.
1:09	TB ship	LD		All right, Sir. <i>W. H. McNeill</i> Lieut (Jr.), U.S. Navy <i>50</i>
5:45	Commodore	Convoy		
6:50	LD	SA ship		
7:30	Commodore	Convoy		
11:03	Commodore	Convoy		
11:35	"	"		
P.M.				
4:30	Commodore	Convoy		
5:22	LD	SA ship		
5:40	Commodore	Convoy		
5:50	"	"		
6:00	"	"		
7:00	"	"		
7:24	"	"		
7:26	"	"		
				EXAMINED.
				APPROVED.

*H. E. H.*  
Lieutenant, U.S. Navy.  
Navigator.

*W. H. McNeill*  
Commander, U.S. Navy  
Commanding

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(THIS PAGE TO BE SENT TO BUREAU OF NAVIGATION MONTHLY WITH LOG SHEETS)

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# United States of America

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## NAVY DEPARTMENT.

Washington, February 4, 1921.

I hereby certify that the annexed transcript of sailing orders of the USS YANCKON as appearing in War Diary of that vessel for the period from July 1 to July 15, 1918 (Ga.G. 36) pages 1 and 2

on file in the Office of the Chief of Naval Operations (Division of Intelligence).  
(Historical Section)

*W.D. MacDougall*

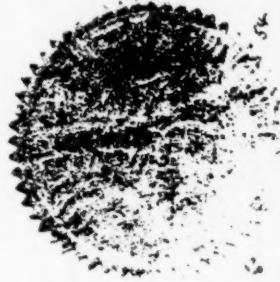
W.D. MacDougall,  
Captain, U.S.N.  
(Official Use)  
Officer in Charge.

## Office of the Secretary.

I hereby certify that W. D. MacDougall, Captain, U.S.N., who signed the foregoing certificate, was at the time of signing Officer in Charge of Historical Section, Division of Intelligence, Naval Operations, and that full faith and credit should be given his certification as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this 5th day of February, one thousand nine hundred and twenty-one

*Frederick Daniels*  
Secretary





SECRET.

G.A.G. 36.

In the event of the H.M.S. "CORCORAN" being unable to sail with the convoy, G.A.G. 36, will proceed with only three escorts to the Toulon Rendez-vous, and thence into Spanish territorial waters, where, on the signal being made by the Commodore (Z.Y.S.), it will divide into two groups as follows:- Each group will proceed independently, keeping inside Spanish Territorial Waters:-

1st Group. 10 Knots.	2nd Group. 8 Knots.
Ansaldo III.	
Suffolk,	Y
Plymouth	VA Sedgepool
	WB Santa Rita
	VB Otta
Junin	TC
Muskogee	YA Osterdal
Glan Colqolqon	WB Asiatic
Sama	XB Stereos
	SA Harington
	XC Albatross
	YC Mercury
	XC
TC VA Marseilles.	UB Marseilles.
YB "	WC "

"Liaison Hall" not going with convoy.  
Message received at 11:00

XC Barcelona.  
YC Asiatic to Benishaf.

VA to Malilla.



SECRET.

G.A.G. 36.

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NOT TO BE ALLOWED TO FALL INTO THE HANDS OF THE  
ENEMY. To be Given to The Shipping Control Officer At  
Port Of Destination.

SAILING ORDERS.

From: Comanda Difesa Traffico Marittimo Genoa.

S.S. U.S.S. YANKTON.

The vessel under your command being in all respects ready for  
sea, it is my direction that you are to leave your present  
position in time to enable YOU TO BE AT THE RED BUOI 12th  
Genoa time, 10h a.m. (Greenwich M.T.) on the  
4th July, 1918.

YOU WILL BE ESCORTED BY:-

H.M.S. CORROPSIS

Italian Destroyer GRANATIERRE.

U.S.S. YANKTON

till abeam Villafranche.

R.N.A. CITTA DI BENGAZI.

H.M.T. ACHENAR.

Convoy will form outside the port according to diagram attached.

Column will be 600 yards zig-zag.  
600 yards no zig-zag.

Ships in column 400 yards.

Ships to take station as soon as possible.  
When formed speed will be ordered by signal.  
The maximum speed of the convoy will be 7-1/2 knots.  
Zig-zag No. 2. (copy attached) will be used if signal is  
made to zig-zag.

ROUTES.

After leaving red buoi.

SOUTH TRUE AND THEN COURSES IN ACCORDING TO THE SIGNAL OF  
COMMODORE.

in S/S ANSAIDO III.

Any divergences from the above rendered necessary by unfor-  
seen circumstances will be signalled from ANSAIDO III. On arrival  
at Gibraltar stop in the examination anchorage and await orders.  
After the ship is berthed report to the Shipping Control Officer  
in H.M. Dockyard who will day and night to Gibraltar.

SIGNAL WILL BE MADE BY C.B. 585 Mercantile Convoy Book and  
International Code.

ALL COURSES AND BEARING SIGNALIZED WILL BE MAGNETIC.

IL CAPITANO DI VASCELLO  
Comandante  
PO CUTURI.

(Seal)  
DIFESA TRAFFICO MARITTIMO.  
GENOVA.

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No. 8.



No. 6.

84 United States of America.



NAVY DEPARTMENT.

Washington, February 19, 1921.  
I hereby certify that the annexed is a true copy of the

"War Diary" of the USS YANKEE from July 4th to July 9th, 1918  
inclusive.

on file in the Office of the Chief of Naval Operations (Historical  
Section)

*Wm. D. MacDougall*  
W. D. MacDougall,  
Captain, U.S.N.  
(opposite side) J. C. Clayer.

Office of the Secretary.

I hereby certify that W. D. MacDougall  
who signed the foregoing certificate, was at the time of  
signing Officer-in-Charge Historical Section, Office of the Chief  
of Naval Operations,  
and that full faith and credit should be given his  
certification as such.

In testimony whereof, I have here-  
unto set my hand and caused the  
Seal of the Navy Department to  
be affixed this 23rd day  
of February, one thousand  
nine hundred and twenty-one



*Robert H. Taylor*  
Assistant Secretary



WAR DIARY  
U.S.S. YANCKTON  
July 4 to July 9 inclusive.  
4 July 1918.

Hauled out from dock about 10:45 GT and proceeded out of harbor. At 15 minutes before leaving the dock a message was delivered from an Italian Naval Officer that the Commanding Officer of the YANCKTON would be S.V.O. of escort until arrival of COROPIS. He also delivered an order in writing to the effect that in the event the COROPIS not joining, the convoy proceed to Spanish Territorial Waters after joining with Marsilles convoy. thence ships to be formed in two groups, proceeding to Mibralter. Proceeded out of harbor and waited for ships of convoy to come out. Formation completed about 10:30 GMT., eighteen ships. Formed in three lines abreast, eight, seven and three ships respectively. Commodore Sicoardi, Rear-Admiral, Italian Navy, upon Italian ship ANSALDO III, heading column "V". Speed of convoy after formation and getting underway, 7-1/2 knots. flank. Escort consisted of U.S.S. YANCKTON, stationed on starboard flank, 1 point forward of beam of 1st line of ships, Italian ship BENGALI on starboard beam 2 points abaft beam of starboard ships, E.M.T. ACHENAR, on port flank. Italian destroyer "GRANATIERRE" astern, escorts zig-zagging.

In latitude 43-25N., longitude 8-28 E. on course 226 pas 214 true, MERIDA (TB) was torpedoed. This ship was in (T) column, second ship. Our first knowledge of this torpedoing was the dropping of depth bombs by the BENGALI. I immediately went about and stood on reverse course. Observed BENGALI dropping depth bombs and firing with port battery. Dropped two depth bombs set for 150 feet, both of which detonated. Circled about. Saw no indications of submarines. The trawler ACHENAR standing by torpedoed ship. The destroyer and BENGALI circling about dropping depth charges.

As it was now nearly dark and the convoy without escort I returned and rejoined escort. Course had been changed twice by signal from Commodore. Convoy proceeded at about 8 knots, changed course at 8:30 to 259 pas. 247 true, and at 10:30 to 273 pas, 261 true. Night dark, some what misty. Received radio from BENGALI that she had rejoined convoy, that the torpedoed ship was afloat, was being towed by the trawler, that Genoa had been asked to send tugs. I subsequently intercepted a W/T that four tugs were being sent from Genoa.

At about 11:40 a number of ships in the convoy were seen to turn on running lights, numbers of ships blowing their whistles, 1 or 2 blasts. Great confusion seemed to prevail from the center to port flank of convoy. Red and green lights were seen moving in various directions. Some ships upon YANCKTON'S flank turned on their running lights. As no emergency signals had been made as to the presence of submarines, I could not determine what the reason for this procedure was. This continued for sometime, the lights being seen over a wide area. No calls for assistance were heard nor was any signal made. Made every effort to keep as many ships together as possible. Circled about and located five. Kept these together the rest of the night.

5 July 1918.

When daylight came, saw ships ahead on port beam. Headed for these, made signals for ships to slow down and reformed convoy with ships present, 13 in number. Reduced speed to 5 knots. Other ships joined until 17 were present. The last to join was the Commodore's ship the ANSALDO III.



-2-

The Commodore signalled that ship was in distress, due to a collision and requested me to take him off. I came close to, lowered a life boat, and brought Italian Commodore, his aid, Italian and English signalmen, comprising his staff, with their baggage, aboard. Speed was increased to 7-1/2 knots, and course laid for Marseilles rendezvous, which position was reached about 8:30 then stood to the westward.

I learned from the Commodore that convoy had met another convoy standing to the northward, and that a number of collisions had taken place, that his ship had struck another ship. I received reports from two other ships in convoy that they had been in collision at same time and had sustained damages above and below the water line and were unfit to proceed to Gibraltar. At 2: p.m. I detached these ships with orders to proceed zig-zagging to Marseilles, the three injured ships and one other. Informed SMO at Marseilles and requested him to send escort to meet these ships, the distance from point of departure to Marseilles being about 60 miles. Convoy proceeded to Spanish coast.

6 July 1918.

At 7: a.m. July 6th, reached Spanish Territorial Waters. Cape Sebastian bearing 110 true, distant 6 miles. Formed convoy into two groups of seven and six ships respectively. The first group to make 10 knots, the second group 8 knots. Gave orders to proceed to Gibraltar, keeping within territorial waters. Italian ship BENGAZI escorting first group, and YANKTON escorting second group. At his request transferred the Italian commodore to the American ship "PLYMOUTH", which was made guide of first group. First group to proceed at 10 knots, the second with YANKTON as escort at 8 knots. Both groups to keep within territorial waters. Informed SMO of Gibraltar with wireless time of arrival on coast.

7 July 1918.

Steaming along at 8 knots, keeping within three mile limit, weather clear, pleasant, passed convoy of 4 ships escorted by two British ships standing to the northward.

8 July 1918.

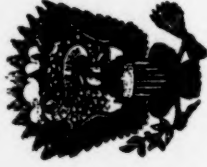
Clear, pleasant, hazy in first part of day. Passed between Cape Palos and Los Hornigos Island at 6:30. When off Cartagena a Spanish Torpedo destroyer overtook the American ship SANTA RITA of convoy, stopped alongside and apparently held conversation with her, she proceeded along coast. At 7 p.m. detached two ships, one for Melilla, one for Benisaf. Tried to send wireless report to Gibraltar announcing arrival. Was unable to do so from 4 to 11:40 on account of static disturbances.

July 9, 1918.

Arrived at Gibraltar 5:30. Assigned buoy No. 12. 9



# United States of America,



## NAVY DEPARTMENT.

Washington, February 5, 1921.  
 I hereby certify that the annexed is a photostatic  
 copy of the log of the USS YANKEE covering the period from  
 July 3 to July 10, 1918, inclusive, according to the records

on file in the Bureau of Navigation.

*Chas. B. Smith*  
*Chief Clerk Navigation*  
 (Official Seal)

## Office of the Secretary.

I hereby certify that Thomas Washington  
 who signed the foregoing certificate, was at the time of  
 signing Chief of the Bureau of Navigation  
 and that full faith and credit should be given his cer-  
 tification as such.

In testimony whereof, I have here-  
 unto set my hand and caused the  
 Seal of the Navy Department to  
 be affixed this 11th day  
 of February, one thousand  
 nine hundred and twenty-one

*Jesse M. Smith*  
 Secretary





**LOG OF THE UNITED STATES SHIP YANKEE**      **Fourth Date.**

AT OR EN ROUTE FROM ..... TO ..... July 8, 1906

TO : July 3, 1918  
F.D. RUTHER, Assistant Commander, 107  
C. I. 107

[illegible]

## DRILLS AND EXERCISES

[illegible]

19 The cost to Bureau of Navigation monthly.)



UNITED STATES SHIP YAMHON Wednesday July 3, 1916.

## REMARKS:

DISEASES AND UNTIL 4 A.M.

Moored to Ponte De Mille.

4 TO 8 A.M.

Moored as before.

8 A.M. TO MERIDIAN.

8:15 mustered crew - no absentees. Made daily inspection of medicine and smokeless powder samples - conditions normal.

MIDNIGHT TO 4 P.M.

Held bag and hammock inspection, shifted and scrubbed dirty bags and hammocks.

4 TO 8 P.M.

No remarks.

8 P.M. TO MIDNIGHT.

Liberty party returned - no absentees.

J. J. Davis  
Lieutenant Commander, U.S.N.R.P.,  
(Commanding.)

Examined:

B. H. Cecil  
Lieutenant

U.S.N. Engineer.

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(This page to be sent to Bureau of Navigation monthly.)

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Page 2

LOG OF THE UNITED STATES SHIP YANKEE Fourth Regt.  
AT ANCON, GEORGIA, July 4, 1918. M  
P.D. BURNS Lieutenant Commander U.S.N.

Hour	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force
1	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
2	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
3	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
4	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
5	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
6	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
7	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
8	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
9	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
10	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
11	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
12	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0

Hour	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force
1	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
2	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
3	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
4	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
5	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
6	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
7	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
8	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
9	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
10	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
11	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
12	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0

Hour	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force	Barometer	Therm. Air	Therm. Sea	Wind	Direction	Force
1	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
2	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
3	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
4	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
5	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
6	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
7	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
8	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
9	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
10	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
11	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0
12	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0	30.15	74	72	0	CALM	0

(This page to be sent to Bureau of Navigation monthly.)







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Page 4-A

ADDITIONAL SHEET.		
111-YANXON	Fourth Date	Date July 4, 1918... 191
<p>7 P.M. TO MIDNIGHT. (Continued)            at for about 10 seconds then blew 2 blasts on whistle, whereupon the entire            first line turned on navigational lights. At about this time ships were thrown            into great confusion. At 11:50 observed one ship steering in opposite direct-            ion and stood apparently thru formation. Yanxon maneuvered so as to keep            in touch with as many ships as possible. At 12:10 another ship turned and            stood to the rear thru convoy. During this time ships of convoy showed all            navigational lights and there was a great confusion of whistle signals. At 12:            15 steamed on course 178 deg. speed about 7-1/2 knots with four ships of            convoy on port beam. Remainder of convoy was at some distance on port quarter.            observed no hostile action, as from submarine or so forth, during this time.            N. Steg 145. Av. Revs. 69.75.</p>		
<p style="text-align: right;">E. F. Ag...            Captain U.S. Navy.</p>		
<p style="text-align: center;">Examined:</p>		
<p>122-3-100            Lieutenant Commander, U.S.N.R.F.,            Commanding.</p>		
<p>123-100 (This page to be sent to Bureau of Navigation monthly with Log sheets.)</p>		







**ADDITIONAL SHEET.**

YALITOL Fourth Rate.

Date July 5, 1918. 191

1982 P.M.

Zig-sagging on station in convoy 2 points forward starboard beam of carrier wing ship; heading the column, distant 900 yards. Speed of convoy 4 1/2 knots. Convoy in fair formation. At 6:50 increased speed of convoy to 5 knots. Exercised gun and depth charge crews at their stations. Tested out general alarm and running lights. At end of watch convoy was straggling. Cruise steam 145. Average revolutions 61.5.

*W. H. Greenbush*  
Lieutenant (JG) U.S. Navy.

17. K. 20 WIDMIGT.

7:45. 20 miles out. Steaming on station in convoy. Keeping position 2 points forward of starboard beam of starboard wing ship. Base course 241.0 psc., 228.0 true. Speed of convoy 7 knots. Making 6 revolutions (9.2 knots) and signaling. At 8:30 changed course to 255.0 psc., 260.0 true. Maintained life boat crew of the watch. Guns covered account of spray coming over. Average steam 44. Average revolutions 59.

*John F. Alder*  
Design (P) U.S. Navy.

*F. D. [Signature]*  
Lieutenant Commander, U.S.N.R.F.,  
Commanding.

Examined

*C. P. Cecil,*  
Lieutenant

U. S. V. Montague.

67 (This page to be sent to Bureau of Navigation monthly with 12g sheets.)

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UNITED STATES SHIP YANKEE Friday July 5, 1918.

## REMARKS.

## INCIDENTS AND UNTIL 4 A.M.

At 11:00, five ships in sight, on course 1730 pso. Steaming on starboard beam of starboard wing ship of 11:00 changed course to 2510 pso. 2300 true. Steaming at various speeds. At 1:00 sighted 11 ships of convoy bearing south, heading over to join rest of convoy. At 2:05 reduced speed of convoy to 7 knots. Average steam 145. Average revolutions 55.9.

*Ensign J. F. H. Walker*  
Ensign J. F. H. Walker

12:55 A.M.

Steaming about convoy at 65 revolutions trying to get them in formation. Convoy scattered. 15 ships in sight. Base course 2510 pso. At 4:17 dropped speed of convoy 6 knots. At 6:21 went alongside "VA" and lowered starboard whale boat to bring off Commodore from Ansaldo to Yankee. At 6:42 Rear Admiral Siccardi, I.M., and staff Captain, together with 2 English signalmen and 3 Italian sailors came on board. At 6:55 hoisted in whale boat and headed for convoy making all possible speed. At 7:25 signalled change course to 2600 pso., 2630 pso., 2700 true. Average steam 137-1/2. Average revolutions 60.8.

*Ensign J. F. H. Walker*  
Lieutenant J. F. H. Walker

1:15 TO MORNING. Steaming in company with convoy, one ship missing, ahead of column, as senior escort officer, also carrying Commodore of convoy. Ahead of Admiral Siccardi, Italian Navy. Steaming at 80 revolutions (10.4 knots) to remain station on starboard bow of convoy. Convoy steaming at 6 knots on course 2510 pso. At 8:10 designated "MA" as guide ship and signalled "IA" and "VA" to take their proper stations on Guide. These ships were keeping to starboard and were very slow in obeying signal to close in. At 9:00 took patrol station on starboard bow and slowed to 65 revolutions (8.9 knots). Italian destroyer "Grunatiere" came within hail and was given orders by Commodore to report flank of convoy. At 10:00 BMDZ1 was directed to take station ahead of convoy. At 10:45 signalled speed of convoy 8 knot. At 11:00 dropped signal "MA" and "VA" to signal orders "To proceed to Marsailles" to "ZA", "UB" and "VA" which the two latter having sustained damages through collision of last night. At 11:50 went ahead at 83 revolutions (10.6 knots) to within hail of "VA" which also sustained damages last night and directed her to proceed to Marsailles. She continued on base course to gain a position ahead of convoy from which to take station on starboard bow. At 8:15 mustered crew - no absentees. Continued till day. Inspected magazine and made visual examination of smokeless powder piles - conditions normal. Tested magazine flood cook and found same in good working order. Average steam 145. Average revolutions 62.2.

*Ensign J. F. H. Walker*  
Ensign J. F. H. Walker

MIDNIGHT TO 4 P.M.

Zig-zagging on station on starboard bow of starboard wing ship of convoy on base course 2620 pso., 2700 true. Steaming at various speeds. At 1:00 reduced speed of convoy to 7 knots. At 2:00 changed course to 2410 pso., at 2:20 S.S. SICLIA, S.S. ANSALDO, S.S. ALBATROS and S.S. LAMINGTON left the convoy and proceeded to Marsailles. "IX" and "X" exchanged positions in convoy. At 3:00 reduced speed of convoy to 6-1/2 knots. Average steam 145. Average revolutions 60.4.

*Ensign J. F. H. Walker*  
Ensign J. F. H. Walker

*Ensign J. F. H. Walker*  
Ensign J. F. H. Walker

Lieutenant Commander, U.S.N.R.F.,  
Commanding.

*Lieutenant J. F. H. Walker*  
Lieutenant J. F. H. Walker

OTHER PAGE TO BE SENT TO BUREAU OF DEFENSE, WASHINGTON, D.C.

L.S.



Lieutenant  
Leitch,

(Title) \_\_\_\_\_

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Page 6

LOG OF THE UNITED STATES SHIP YANKEE ..... Fourth Rate.  
AT OCEAN ROUTE FROMAT Sea Returning to Bega with Convoy. .... July 6, 1919, IN  
TO  
P.D. BURNS Lieutenant Commander U. S. NAVY

DATE	NAME	POSITION	TEMPERATURE	WIND	BAROMETER	TEMPERATURE	REMARKS	CLERK
1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10
11	11	11	11	11	11	11	11	11
12	12	12	12	12	12	12	12	12

COMPARISON		STANDARD	
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9	9	9	9
10	10	10	10
11	11	11	11
12	12	12	12

DRILLS AND EXERCISES	
1	1
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11	11
12	12

(This page to be sent to Bureau of Navigation monthly.)

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## ADDITIONAL SHEET.

YANKTON Fourth Rate.

Date July 6, 1918. 191

11:34. TO MIDNIGHT.

Steaming on station in convoy on port quarter of leading ship of column following Spanish Coast, and making speed of about 7.5 knots. Zig-zagging side and stern lights. At 8:30 passed Cape Saled Light. At 11:34 changed course to 174 p.s.c. At 11:34 Fortuna light beam on course 1740 p.s.c., changed course to 2070 p.s.c. Average steam 135. Average revolutions 64.

*J. H. Walker*  
Ensign U.S. Navy.

*J. D. Catlin*  
Ensign

*Exp. 100*  
Lieutenant Commander, U.S.N.R.F.,  
Commanding.

*Exp. 100*  
Lieutenant U.S. Navy.

This page to be sent to Bureau of Navigation monthly with log sheet.

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Page 6

UNITED STATES SHIP YANKTON

Saturday July 6, 1918.

## REMARKS.

CHECKS AND UNTIL 4 A.M.

Zig-zagging on station two points forward of starboard beam of wing ship on base course 2630 p.c. Steaming at various speeds. Speed of convoy seven knots. At 2:05 sighted Cape San Sebastian light bearing 2700 p.c. At 2:50 sighted land bearing 3000 p.c. Average steam 142. Average revolutions 64.

*Exp. 100*  
Ensign U.S. Navy.

4:10 P.M.

Zig-zagging on station in convoy in convoy 2 points forward starboard beam of "M". At 7:07 convoy formed in two groups in line ahead and proceeded along Spanish Coast. At 7:10 went alongside S.S. PLYMOUTH and lowered starboard life boat. Sent Italian Admiral and his staff on board ZYMBERTH. At 7:45 Italian Admiral was given permission to proceed to destination. S.S. MERCURY reported that she was bound for Balboa and headed Eastward with destroyer. Mastered the boat crew of the watch. Guns were covered during first part of the watch because of spray. Average steam 145. Average revolutions 60.6.

*Exp. 100*  
Lieutenant U.S. Navy.

11:34. TO MIDNIGHT. Steaming in company with convoy along Spanish coast in territorial waters. Forming ships into single column in two groups. BEMAZI with 7 ships. Yankton with 5 slower ships. Making 7 knots on course conforming to last line. At 8:45 "ZA" dropped out of formation account of engine trouble. At 9:20. At 9:30 made speed 8 knots. At 9:15 quarters for muster - "Admiral". Followed by General quarters and battery drill. At 11:57 "M" and YANKTON'S group being unable to maintain speed of faster group. Inspect magazine and made visual test of smokeless powder amplet - condition normal. Spread firecrestle aiming to protect ready ammunition locker from direct fire of gun which was causing excessively high temperature in same. Signals as per record signal book. Average steam 146. Average revolutions 60.

*Exp. 100*  
Ensign U.S. Navy.

2:10 PM TO 4 P.M.

Steaming as before along Spanish Coast on port quarter of leading ships, steaming various courses at various speeds. At 1:35 put over port light reading 14.5. At 2:25 passed French trawler towing French sailing ship. At 3:15 passed an East Bound Convoy consisting of the S.S. KATHINA, S.S. WIMBACH, S.S. SANTA PAULA, S.S. EXLAK and two escorts. Signals as per signal record book. Average steam 125. Average revolutions 60.5.

*Exp. 100*  
Ensign U.S. Navy.

4:30 P.M.

Steaming on station in convoy, on port quarter of leading ship, distant 500 yards. Speed of convoy about 8.4 knots. Convoy proceeding along Spanish Coast within 5 mile limit. Passed various small sailing craft during day. Exercised gun and depth charge crews at their stations. Tested out search light, running lights and general alarm. Lit side lights and dimmed stern



LOG OF THE UNITED STATES SHIP YANKEE "Comm. Date.  
At OMAHA, Neb. returning to base with convoy. July 7, 1916

P.D. 27785 Lieutenant Commander F. A. ...

Hour	Lat.	Long.	Wind	Baromet.	Therm.	Humid.	Visib.	Clouds	Remarks
1	6 43 50	68 28	W	30.124	77	76	75	75	be
2	7 1 50	68 1	W	30.124	77	75	75	75	be
3	7 5 50	68 0	W	30.124	76	75	75	75	be
4	7 9 50	68 0	W	30.124	76	75	75	75	be
5	7 13 50	68 0	W	30.124	76	75	75	75	be
6	7 17 50	68 0	W	30.124	76	75	75	75	be
7	7 21 50	68 0	W	30.124	76	75	75	75	be
8	7 25 50	68 0	W	30.124	76	75	75	75	be
9	7 29 50	68 0	W	30.124	76	75	75	75	be
10	7 33 50	68 0	W	30.124	76	75	75	75	be
11	7 37 50	68 0	W	30.124	76	75	75	75	be
12	7 41 50	68 0	W	30.124	76	75	75	75	be

Hour	Lat.	Long.	Wind	Baromet.	Therm.	Humid.	Visib.	Clouds	Remarks
1	6 43 50	68 28	W	30.124	77	76	75	75	be
2	7 1 50	68 1	W	30.124	77	75	75	75	be
3	7 5 50	68 0	W	30.124	76	75	75	75	be
4	7 9 50	68 0	W	30.124	76	75	75	75	be
5	7 13 50	68 0	W	30.124	76	75	75	75	be
6	7 17 50	68 0	W	30.124	76	75	75	75	be
7	7 21 50	68 0	W	30.124	76	75	75	75	be
8	7 25 50	68 0	W	30.124	76	75	75	75	be
9	7 29 50	68 0	W	30.124	76	75	75	75	be
10	7 33 50	68 0	W	30.124	76	75	75	75	be
11	7 37 50	68 0	W	30.124	76	75	75	75	be
12	7 41 50	68 0	W	30.124	76	75	75	75	be

Hour	Lat.	Long.	Wind	Baromet.	Therm.	Humid.	Visib.	Clouds	Remarks
1	6 43 50	68 28	W	30.124	77	76	75	75	be
2	7 1 50	68 1	W	30.124	77	75	75	75	be
3	7 5 50	68 0	W	30.124	76	75	75	75	be
4	7 9 50	68 0	W	30.124	76	75	75	75	be
5	7 13 50	68 0	W	30.124	76	75	75	75	be
6	7 17 50	68 0	W	30.124	76	75	75	75	be
7	7 21 50	68 0	W	30.124	76	75	75	75	be
8	7 25 50	68 0	W	30.124	76	75	75	75	be
9	7 29 50	68 0	W	30.124	76	75	75	75	be
10	7 33 50	68 0	W	30.124	76	75	75	75	be
11	7 37 50	68 0	W	30.124	76	75	75	75	be
12	7 41 50	68 0	W	30.124	76	75	75	75	be

Hour	Lat.	Long.	Wind	Baromet.	Therm.	Humid.	Visib.	Clouds	Remarks
1	6 43 50	68 28	W	30.124	77	76	75	75	be
2	7 1 50	68 1	W	30.124	77	75	75	75	be
3	7 5 50	68 0	W	30.124	76	75	75	75	be
4	7 9 50	68 0	W	30.124	76	75	75	75	be
5	7 13 50	68 0	W	30.124	76	75	75	75	be
6	7 17 50	68 0	W	30.124	76	75	75	75	be
7	7 21 50	68 0	W	30.124	76	75	75	75	be
8	7 25 50	68 0	W	30.124	76	75	75	75	be
9	7 29 50	68 0	W	30.124	76	75	75	75	be
10	7 33 50	68 0	W	30.124	76	75	75	75	be
11	7 37 50	68 0	W	30.124	76	75	75	75	be
12	7 41 50	68 0	W	30.124	76	75	75	75	be











U. S. N., August,

(This page to be sent to Bureau of Navigation, vessels only.)

Page 6

AT OVEN ROUTE FROM VET SEA RETURNING TO BASE WITH CONVOY. . . . . July 6, 1918. 11

[illegible]

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**DRILLS AND EXERCISES.**

(This page to be sent to Bureau of Narcotics; monthly.)



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

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This page to be sent to Bureau of Navigation monthly.

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UNITED STATES SHIP YANKEE Sunday July 7, 1918.

# REMARKS

## EXERCISES AND UPTIL 4 A.M.

Steaming along Spanish coast as escort to a convey of merchant ships. Stationed on port quarter of leading ship. Steaming at average speed of 8 knots on courses as follows: 12 miles to 1:30 am 240° pco., approximately; 1:30 to 2:00 am, 240° pco., approximately; 2:00 to 4:00 am 225° pco., approximately. Speed of convey about 8 knots. At 2:40 passed steamer being met. Exercised gun and depth charge crews of the water at their stations. Average steam 140. Average revolutions 60.25.

4:30 A.M.

Steaming on station in convey on port quarter of leading ship, distant 500 yards. Convey in column proceeding along Spanish Coast within territorial waters. Speed about 8.5 knots. At 5:40 steamed on course 225° pco., and speed 40 revolutions. Passed Orpesa Light steam at 6:00. Passed area to San Juan Light steam at 7:55. Exercised gun and depth charge crews at their stations. Mustered life boat crew of the water. Average steam 140. Average revolutions 59.9.

11 A.M. TO MERIDIAN.

Steaming on station with convey following Spanish Coast, making speed of about 7.5 knots over the ground. At 8:00 Castellon de la Plana Light steam on course 225° pco., 215° true. At 10:00 Canal Point Light steam on course 225° true. At 10:42 Canal Point Light steam on course 215° pco. At 9:15 met of the Navy to all hands. Exercised articles for the government at their stations. Exercised guns and depth charge crews of the water. Inspected magazine and made visual tests of ammuni- tion powder samples - conditions normal. Average steam 146. Average revolutions 59.2.

MERIDIAN TO 4 P.M.

Steaming along Spanish Coast as escort to convey of a merchant ship, stationed on port quarter of leading ship. Steaming at various speeds, making about 8 knots, and on various courses. Speed of convey about 8 knots. At 1:15 passed Cape Cabanel Light steam, ship's head 180° pco. Exercised gun crew of the water. Average steam 132. Average revolutions 59.2.

4:30 P.M.

Steaming on station in convey on port quarter of leading ship, outside of three mile limit. Course 135° pco., Convey in column proceeding Gibraltar territorial waters of Spain. At 4:40 passed a motor torpedo boat on course 225° pco. At 5:00 with Port Point steam on course 125° pco. At 5:15 steamed various courses about Cape San Antonio Light steam, search light, recognition lights and general alarm. Fired on mine lights and running lights at 7:15. Average steam 140. Average revolutions 61.6.

11 P.M. TO MIDNIGHT.

Steaming on station with convey, following Spanish Coast in territorial waters. Course 240° pco., 225° true, about 8 knots. At 10:00 Albu- rra Light steam. 10:50 with Benidorm Island steam changed course to 270° pco., 240° true. At 11:30 Villosa Light steam, Cape Rueta bearing 280° true. At 11:40 changed course to 230° pco., 215° true. Mustered life boat crew and exercised gun and depth charge crews of the water at their stations. Average steam 140. Average revolutions 59.

Commander, U.S.N.R.F.,  
Comanding.

Examined

Lieutenant  
R. P. P. P. P.

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This page to be sent to Bureau of Navigation monthly.

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LOG OF THE UNITED STATES SHIP YANCON Fourth Rate.  
AT OAKHURSTHURST SEA returning to Base with Convoy. July 8, 1918-44

Y.D. BURNS Lieutenant Commander U.S.N.

[illegible]

## DRILLS AND EXERCISES

Drills and Exercises	
Drills	Exercises
1. Drill	1. Drill
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96. Drill	96. Drill
97. Drill	97. Drill
98. Drill	98. Drill
99. Drill	99. Drill
100. Drill	100. Drill

Hours underway	24
Miles steamed	199.4.

[illegible]



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

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UNITED STATES SHIP YANXTON Monday July 8, 1918.

# REMARKS.

PROCEEDS AND UTIL 4 A.M. Steaming along Spanish coast as escort to a convoy of merchant ships. Stationed on port quarter of leading ship. Steaming at various speeds and on various courses following coast line. At 12:45 passed Cape Huertes abeam, S.W. 180° psc. At 2:25 passed a steamer heading in a northerly direction. At 3:10 sighted Point Cornuda light on the starboard bow. Exercised gun at depth charge crews at their stations. Av. Steam 122. Av. Rev. 63.

1:30 A.M. Proceeding along Spanish Coast with convoy. Convoy in column within territorial waters. Yanxton on port quarter of "A" distant 600 yards. Courses and speeds various. At 4:40 sighted Cape Pelos bearing 205° psc. At 5:20 sighted small French steamer headed to northward. At 6:00 passed steamer on starboard bow. At 6:25 rounded Cape Pelos light house. Mustered life boat crew of the ship. Exercised gun and depth charge crews at their stations. Av. Steam 140.

Ensign (17) U.S. Navy.

Lieutenant (18) U.S. Navy.

1:15 TO MIDNIGHT. Steaming on station with convoy along Spanish Coast in territorial waters. 9:00 course 270° psc, 1550 true, speed 8 knots. At 9:30 Cartagena Lt. was distant 2 miles. At 9:15 passed Cape Finca light abeam 0.8 miles distant. At 9:00 changed course to 260° psc, 2450 true. 10:00 Mazaron light abeam 3-1/2 miles distant. 11:20 changed course to 250° psc, 2350 true, 11:28 Lt. Cape abeam 1.1 miles. 11:45 changed course to 240° psc, 2300 true. At 9:15 held station for muster, no absentees, followed by general quarters, collision and damage ship drills. Tim. required for rigging collision net - 3 minutes. Inspection of magazine and made visual test of smokeless powder samples - conditions normal. Began confidential publications. Checked up battalion gear. At 9:30 small Italian torpedo boat speed out from Cartagena and followed convoy close along starboard line, later stood in toward Mazaron. Signals as per signal record book. Av. Steam 137. Av. Rev. 62.7.

Ensign (17) U.S. Navy.

5 JULIAN 10 4 P.M. Steaming along Spanish Coast as escort to a convoy of 6 merchant ships. Stationed on port quarter of leading ships. Steaming at various speeds and on various courses. Speed of convoy about 8 knots. Signals as per signal record book. Av. Steam 130. Av. Rev. 59.2.

Ensign (17) U.S. Navy.

1:30 P.M. Proceeding Gibraltar with convoy. Convoy in Spanish territorial waters. Station on port quarter of leading ship outside 3 mile limit. Base course 240° psc, speed of convoy about 8 knots. Making 63 revolutions. At 4:15 reduced speed to 2 revolutions. At 4:20 sighted a small steamer headed W.E. along coast. Passed starboard bow at 4:45. At 5:35 increased speed to 65 revolutions, and rounded Cape de Gata. At 7:00 "VC" left convoy heading south. At 7:14 rounded Cape de Gata and reduced speed to 60 revolutions. At 7:18 "UA" left convoy heading S.W. At 7:18 convoy reduced speed 1/2 knot to allow rear ships to catch up. At 7:20 reduced speed to 50 revolutions, while convoy proceeded around Cape de Gata. Tested out general alarm, recognition signals, running lights and searchlights. Exercised gun and depth charge crews at their stations. Av. Steam 140. Av. Rev. 62.6.

Lieutenant (18) U.S. Navy.

1:15 TO MIDNIGHT. Steaming on station with convoy following Spanish Coast in territorial waters on course 285° psc, 270° true, speed 8 knots. At 8:47 Almeria Lt. abeam changed course to 240° psc, 250° true. At 10:20 with Sabinal Lt. Lt. was distant 1.5 miles changed course to 260° psc, 270° true. At 10:30 Sabinal Lt. Lt. was distant 2.5 miles. At 11:20 changed course to 250° psc, 260° true. At 11:45 rounded Cape de Gata. Exercised gun and depth charge crews at their stations. Av. Steam 140. Av. Rev. 62.6.

Ensign (17) U.S. Navy.

Ensign (17) U.S. Navy.

Ensign (17) U.S. Navy.

Ensign (17) U.S. Navy.

Ensign (17) U.S. Navy.

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10	208	MSB	3	20:06	79 76 75	-	be	41	-1
11	310	WSB	1	30:08	81 76 75	-	be	41	-1
12	310	WSB	1	30:09	80 76 75	-	be	41	-1
	308	CALN	0	30:08	79 76 75	-	be	41	-1

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UNITED STATES SHIP YANKEE Tuesday July 9, 1916.

REMARKS.

MOVES AND UNTIL 4 A.M.

Steaming along Spanish coast as escort to a convoy of merchant ships. Steaming at various speeds. Stationed on port quarter of lead light beam. At 1:50 changed course to 280°, 1650 true. At 1:50 sighted Cape Matif light bearing 290° pec. At 1:55 passed an eastbound steamer on port bow. At 2:20 Socrates light beam. Exercised gun and depth bomb crew of 1st and 2nd stations. Av. Steam 135. Av. Revs. 62.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

1200 A.M.

Proceeding Gibraltar with convoy in column within Spanish territorial waters. Course 280° pec. Speed 8.5 knots. Yankee on port quarter of lead light beam 3 mile limit. At 6:05 changed course to 295° pec. Increased speed to 9.4 revolutions at 7:00. Exercised gun and depth charge crew. Av. Steam 144. Av. Revs. 62.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

1 A.M. TO MERIDIAN.

Steaming on station with convoy on course 270° pec., 255° true, speed 8 knots. "YA" about 2 miles astern of station. 8:35 with kilahega bearing 315° true changed course 240° pec., 2250 true. At 9:15 held quarters in master, no absentee, followed by General quarter and battery drill. 10:32 Alburra light beam, bearing 320° true, distant 3 miles changed course to 270° pec., 2550 true. 11:00 changed course to 290° pec, 2760 true and eleven to 1 mile to cable "YA" to close up. Examined magazine and made visual test of mules powder samples, conditions normal. Av. steam 135. Av. Revs. 62.76.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

MIDIAN TO 4 P.M.

Steaming along Spanish coast as escort to convoy of 4 merchant ships. Steaming on various courses and at various speeds, stationed on port quarter of leading ship. At 12:37 passed Marbella light beam distance 14 miles. At 1:00 sighted Gibraltar Rock bearing 262° pec. At 1:55 hauled in gun log reading 8. Steamer "YA" about 2 miles astern of station. Av. Steam 135. Av. Revs. 56.1.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

430 P.M.

Proceeding Gibraltar with convoy. Convoy in column headed for Arge point. Course 230° pec, speed 8.5 knots. Yankee on port beam of convoy leading 60 revolutions. At 4:06 reduced speed to 58 revolutions to keep in touch with rear ship. At 4:10 sighted a convoy on port bow heading westward. At 4:30 rounded Europa Point and steamed various courses into harbor. Moored at 5:40 buoy at 5:40 with port chain and wire preventer. Exercised gun and depth charge crew at their stations. Draft upon mooring 11'10" aft 14'2".

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

10 A.M. TO MIDNIGHT.

Moored as before. 10:00 liberty party returned - no deserters.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

*R. C. L. B. Lane*  
Lieutenant (Jr.) U.S. Navy.

(This page is to be sent to Bureau of Navigation monthly.)

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LOG OF THE UNITED STATES SHIP YANKEE  
Moored to buoy 1 at U.S. Naval Base, Nine.  
ATKINS, J. H. 1910  
Fourth Date. July 10, 1910.

**Y.D. BURNS** Lieutenant Commander, USN

[illegible]



UNITED STATES SHIP YANKEE Wednesday July 10, 1918.

## REMARKS.

ANCHORS AND UNTIL 4 A.M.

Moored as before to Buoy #14.

P. C. LeBlanc  
Ensign, U.S.N.V.

4 TO 6 A.M.

Moored as before. Received from H.M. Victualling yard the following supplies for use in the General mess: 150 lbs beef and 800 lbs potatoes.

P. C. LeBlanc  
Ensign, U.S.N.V.

6 A.M. TO MIDNIGHT.

At 6:40 explosion occurred on Portuguese Steamer Peniche. Hit main fire and rescue party to Peniche. 10:20 rescue party returned. Inspected magazine and made visual test of smokeless powder samples - conditions normal.

P. C. LeBlanc  
Ensign, U.S.N.V.

MIDNIGHT TO 4 P.M.

The following named men were this date transferred to the U.S.S. ASHVILLE with bags hammocks and all necessary papers: Koenig, J.C. (QM1c); Gehl, E.M. (QM2c); Goodrich, M.A. (QM2c); Aulis, C.L. (QM2c); Katselst, J. (QM1c); and Hucliver, J. (M11c). Received one 25 foot whale boat from H.M. Dockyard.

P. C. LeBlanc  
Ensign, U.S.N.V.

4 TO 8 P.M.

Assistant Surgeon J.T. Stringer, U.S.N. Reported aboard for duty in accordance to orders from Commander 2nd Artillery Squadron based on Gibraltar. Following 1:30 p.m. reported aboard for duty from U.S.S. NASHVILLE. Ensign, P.B. (CE1r); Wilsonberger, W.E. (Eng2c); Taylor, C.E. (QM2c); M.M.V.; Che, C.A. (QM2c); D.M.; D.M.; J.C. (Eng2c); and Bellin, J. (M11c). 4:00 U.S.S. CATTARAUGUS stood by, and received 25 ft buoy.

P. C. LeBlanc  
Ensign, U.S.N.V.

8 P.M. TO MIDNIGHT.

Received 25 tons fresh water from H.M. Dockyard. Liberty men returned, no absentees.

P. C. LeBlanc  
Ensign, U.S.N.V.

Next

Examined

P. C. LeBlanc  
Lieutenant Commander, U.S.N.V.P. C. LeBlanc  
Lieutenant  
U.S.N.V.

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COMMUNICATION RECORD			
United States Ship YAKTOR, July 1918.			
TIME	FROM	TO	TEXT
July 1. 4:40 am	COMMEDES AND USFTL 4 A.M.		No signals. <i>B. C. L. Blaine</i> Lieutenant, U.S. Navy.
4:40 am.	Com.	A.S.P.	Int. E. <i>F. E. Hatcher</i> Ensign, U.S. Navy.
8:00 am 8:00 am 8:45 am	Com. Com. Ach.	All ships. All ships. YAKTOR.	Canoy. 275 Con. EGS Sem. YAKTOR and Achonaf to proceed into harbour with the first ships. From 230. L
9:25 am 10:00 am 10:01 am	Com. Com. YAKTOR.	All ships. YAKTOR. COR.	Sem. What berth are you going to. Alongside Ponta De Milla, port side to dock. <i>B. C. L. Blaine</i> Ensign, U.S. Navy.
MIDNIGHT TO 4 P.M.			
		No signals.	<i>B. C. L. Blaine</i> Ensign, U.S. Navy.
	4 P.M. TO 6 P.M.	No signals.	<i>B. C. L. Blaine</i> Ensign, U.S. Navy.
	6 P.M. TO MIDNIGHT.	No signals.	<i>B. C. L. Blaine</i> Ensign, U.S. Navy.
	Approved: <i>F. L. R. Comdr.</i> Lt. Comdr. U.S. Navy. Commanding.		<i>L. P. Kessell</i> Lieutenant, U.S. Navy. Navigator.
July 2, 1918.		No signals sent or received.	<i>B. C. L. Blaine</i> Lieutenant, U.S. Navy. Navigator.
	APPROVED. <i>F. L. R. Comdr.</i> Lieutenant, Commander, U.S. Navy. Commanding.		



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M. No. 72

## COMMUNICATION RECORD

United States Ship YANKEE Fourth Date.

Time	FROM	TO	MESSAGE	TEXT
1916 July 4				<i>to Place it,</i> Lieutenant, U.S. Navy, Avigates.
			APPROVED. 5/10 Lieutenant Commander, Commanding.	
July 5.			COMMENCES AND UNTIL 4 A.M. No signals.	<i>RECEIVED</i> Ensign, 1st U.S. Navy.
4:00 am	Yankee	A.S.P.	Int.	21X.
4:00	"	"	Int.	O.
4:05	"	"	Int.	21X.
4:17	"	"	Int.	21X.
4:27	"	"	Int.	IV.
4:37	"	"	Int.	21X.
4:50	"	YA	Sem.	Increase speed and close in on YA.
4:57	"	ZA	Sem.	You are to wide, close in on "Y" Column.
5:48	Commodore	YANKEE	Sem.	Will you please send this message to Genoa by wireless. On account of a collision we had last night, our steamer is unable to proceed with convoy. If possible I will trans- fer to another steamer of the convoy. 310000
5:55	Yankee	WA	Conv.	If you spot him I will transfer to your ship
6:00	Commodore	S.A.O.	Sem.	until Italian escort will rejoin us.
6:06	Yankee	Commodore	Sem.	I will send boat immediately if you are ready.
6:06	Commodore	Yankee	Sem.	I will be ready in about ten minutes.
6:13	Commodore	Yankee	Sem.	Item ready now.
6:15	Yankee	Commodore	Sem.	Will you please stop.
6:15	Commodore	Yankee	Sem.	We have a leader on the port side aft.
6:17	Yankee	A.S.P.	Int.	21X.
7:05	M	Yankee	Sem.	I inform you that I have no more depth charges in case of attack of submarine.
7:20	M	Yankee	Int.	3 space 21X.
7:27	Yankee	A.S.P.	Int.	21X.
7:50	SA	Yankee	Sem.	Will you please inform me who is acting as guide now?
8:08	Yankee	SA	Sem.	<i>RECEIVED</i> Lieutenant 1st U.S. Navy.
8:10	YANKEE	WA	Sem.	WA is now acting as guide.
8:15	Yankee	YA, YA, ZA.	Sem.	You are the guide please hoist ensign at the main.
8:50	Yankee	AS.P.	Conv.	WA is the guide take your proper station on her a. once.
9:10	YANKEE	RECEIVED	Sem.	21X.
9:15	RECEIVED	Yankee	Sem.	Please take station on port flank of convoy.
9:15	Yankee	YA	Sem.	I have not finished my message to the Italian Comodore.
9:25	Yankee	YA	Sem.	Why do you not obey orders and close in. position on guide.
9:43	YANKEE	YA, ZA	Conv.	O.
10:00	RECEIVED	Yankee	Int.	OK.
10:40	WA	Yankee	Sem.	From WS to Commodore. At midnight last night WC was in collision with another steamer that struck her on port side masts, she has sus- tained damages above the water line also bulg- ed ribs. Repairs will be necessary before she can move shall she proceed with convoy to des- tination or go to Marseilles for repairs.
10:45	Yankee	A.S.P.	Conv.	21X.
10:50	Yankee	US	Sem.	Were you injured last night and are you able to proceed.







## COMMUNICATION RECORD

**United States Ship**      **YANKEE**      **Fourth mate.**

TIME	FROM -	TO -	MESSAGE	NOTES
1918. July 6.			COMMUNICATIONS AND UTILITY 4 A.M.	No signals.
4:10	Yankee	A.S.P.	Conv.	O.
5:20	"	VB	Sem.	O.
6:40	"	WA	Sem.	When the convoy is formed on Spanish coast the Commodore will go aboard your ship. You will be guide of first group.
6:52	WA	Yankee	Sem.	Can you make ten knots.
7:07	Yankee	A.S.P.	Conv.	Our best speed is nine and a half knots.
7:14	"	"	"	XIN space ZTB.
7:40	"	ZA	"	ZVB.
8:46	ZA	Yankee	Sem.	O.
8:30	Yankee	TA	Sem.	Will have to stop for about 10 minutes in order to change valves as we cannot get a vacuum.
9:00	"	"	"	Make seven knots until last two ships join group.
9:06	"	ZA	"	ZA is temporarily out of formation due to breakdown.
9:10	"	A.S.P.	Int.	Take station next stern of guide.
9:26	ZA	Yankee	Sem.	Shall we take up our original position or follow stern of VC.
9:30	ZA	Yankee	Sem.	Follow stern of VC.
9:50	Yankee	ZA	Sem.	You are making more than eight knots, you are too fast for the other ships.
9:50	"	WA	Sem.	Take position stern of column.
11:57	"	TA	Sem.	That are you logging by the hour by taffrail log.
12:06	"	TA	Sem.	We are logging seven and a half knots. Gradually increase speed one half knot.
12:07	TA.	Yankee	Sem.	We will try to make the eight and a half knots
12:17	Yankee	TA	Sem.	I have increased speed half a knot but I am afraid it is too fast.
12:43	VC	Yankee	Sem.	I agree with you slow down one half knot.
1:10	TA	"	Sem.	
1:13	Yankee	TA	Sem.	
4:45	Yankee	A.S.P.	Conv.	ZSB.
4:55	"	"	"	ZAP.
5:45	"	TA	Sem.	I suggest rounding Cape Vertice at a distance of two miles and passing Cape Verde two and one half miles.
5:50	TA	Yankee	Sem.	Do you wish me to cut across the Gulf of San Georges from Cape Sain to Cape Vertice.
6:00	Yankee	TA	Sem.	No. Continue following coast. You may head for cape when light bears 174 true.
6:20	TA	Yankee	Sem.	From Captain to S.O. of Escort. We are now making eight knots. I suggest decreasing speed half a knot during the hours of darkness to assure the convoy keeping together.
6:30	Yankee	TA	Sem.	Decrease speed 1/4 knot.
8 P.M. TO MIDNIGHT.				No signals.



NO SIGNALS.

Lieutenant (JG) U.S. Navy.

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COMMUNICATION RECORD			
United States Ship YANKEE FOURTH PACE.			
TIME	FROM	TO	TEXT
1219 July 6.			
<p>APPROVED.</p> <p>Lieutenant Commander, U.S.N.R.F., Commanding.</p> <p>July 7.</p>			
<p>COMMENCES AND UNTIL 4 A.M. No signals.</p>			
4 TO 8 A.M.			<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
8 A.M. TO MERIDIAN.			<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
8:20 PM	Yankee	SA	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
8:40	SA	Yankee	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
8:45 8:08	Yankee	SA A.S.P.	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
4:20	Yankee	SA	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
<p>42-M. TO MIDNIGHT.</p> <p>No signals.</p>			
<p>APPROVED.</p> <p>Lieutenant Commander, U.S.N.R.F., Commanding.</p> <p>July 8.</p>			
<p>COMMENCES AND UNTIL 4 A.M. No signals.</p>			
7:27 am	Yankee	SA	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>
7:33	SA	Yankee	<p>Ensign (JG) U.S. Navy.</p> <p>Lieutenant (JG) U.S. Navy.</p>



COMMUNICATION RECORD				
United States Ship YANKEE fourth date.				
TIME	FROM	TO	MESSAGE	TEXT
1918				
July 8				
8:50 am	Yankee	YA, UA.	Conv.	270.
9:27	"	YA	Sem.	Can you make better speed than you are doing now?
9:30	YA	Yankee	Sem.	We are going full speed now and cannot do any better.
8:50 pm	Yankee	YA, UA.	Conv.	280 space 11.
8:55	"	A.S.P.	"	280 space 11.
3:55	YA	Yankee	Sem.	Dis S.S. Lyon Hall leave Genoa with this convoy. If so can you please tell me what happened to her.
4:00	Yankee	YA	Sem.	No. She did not leave with us. It will be necessary for you to slow down about a quarter knot to permit last ship to keep up.
5:17	UA	Yankee	Sem.	From Captain to S.O. of escort - We have British signalmen on board and I want to know if you are going to take him off before ship leaves tonight.
5:20	Yankee	UA	Sem.	No. I will not take him off he will be provided for at your destination.
5:27	UA	Yankee	Sem.	Signalman is not on crew's list signed by Spanish consul at Genoa and I am afraid he will get interned.
5:32	Yankee	UA	Sem.	No. I have no orders to take him off.
7:10	Yankee	YA	Sem.	If there is any trouble about the matter consult British consul.
				When UA leaves slow down one half knot until eight pm to permit rear ships to come up.
				8 P.M. TO MIDNIGHT. No signals.
				APPROVED Lieutenant Commander, U.S.N.E. Commanding.
July 9				
				COMMENCES AND UNTIL 4 A.M. No signals.
				4 TO 8 A.M. No signals.
				8 A.M. TO MERIDIAN. No signals.
				MERIDIAN TO 4 P.M. No signals.
4:45	2nd. O.			You will proceed today number fourteen.
5:10	Yankee	5 P.M. 10. Pk.		Yankee requests one hundred and ten tons of coal.
6:00	Yankee	5 P.M. 10. Pk.		Yankee requests 800 lbs potatoes one kind
				quarter beef tomorrow July 10, as early as possible.
				APPROVED Lieutenant Commander, U.S.N.E. Commanding.



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COMMUNICATION RECORD				
United States Ship YANKEE Fourth Rate.				
TIME	FROM	TO	MESSAGE	TEXT
1918. July 3.			0 P.M. TO MINNAPOLIS. No signals.	<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
	APPROVED J. D. King Lieutenant Commander, U.S.Navy. Commanding.			<u>LePleceil</u> Lieutenant, U.S. Navy, Navigator.
July 10.			COMMUNICATIONS ARE UNTIL 4 A.M. No signals.	<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
			4 TO 5 A.M. No signals.	<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
8:20	Yankee	US Adm.	Sem.	Yankee requests twenty five tons fresh water immediately.
8:45	Druid	Yankee	Sem.	Can you return our chief carpenter's mate today.
9:55	Yankee	Druid	Sem.	We would like to keep carpenter's mate until tomorrow noon if agreeable.
10:17	Druid	Yankee	Sem.	Referring to last signal - tomorrow will be all right.
11:00	S.M.-C.	Yankee	Sem.	Many thanks for the prompt and able assistance rendered by you and others of the U.S. force on the B.S. Penicillin after her explosion.
				<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
1:21	US Adm.	All US ships sem.		Any ship that can spare a great circle chart of North and South Atlantic report fact to flag office by signal.
1:22	US Adm	U.S. Ships Sem.		Mail will close at Naval Base at eight am tomorrow, Thursday.
				<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
5:00	IMO	Yankee	Sem.	Court of inquiry into attack on convoy Oad thirty-six will be held in court of inquiry seems at nine thirty am. Beg on eleventh July. Members of court Commander Burgess of Bonaventure, Comdr Lemon, USN of Nashville and Italian representative. Yankee is requested to arrange for attendance of necessary witnesses. Papers are being sent Commander Burgess and short hand writer will be provided.
				<u>B. C. LeBlanc</u> Ensign, U.S.Navy.
			6 P.M. TO MINNAPOLIS. No signals.	<u>LePleceil</u> Lieutenant, U.S. Navy, Navigator.
	APPROVED J. D. King Lieutenant Commander, U.S.Navy. Commanding.			<u>LePleceil</u> Lieutenant, U.S. Navy, Navigator.



SS. NAPOLI - SS. LAMINGTON

COLLISION JULY 25 1918

*Loss for 21 percent*

LAT. 43° N

HMS Jeannette II

USS Castor

COLUMN No. 1

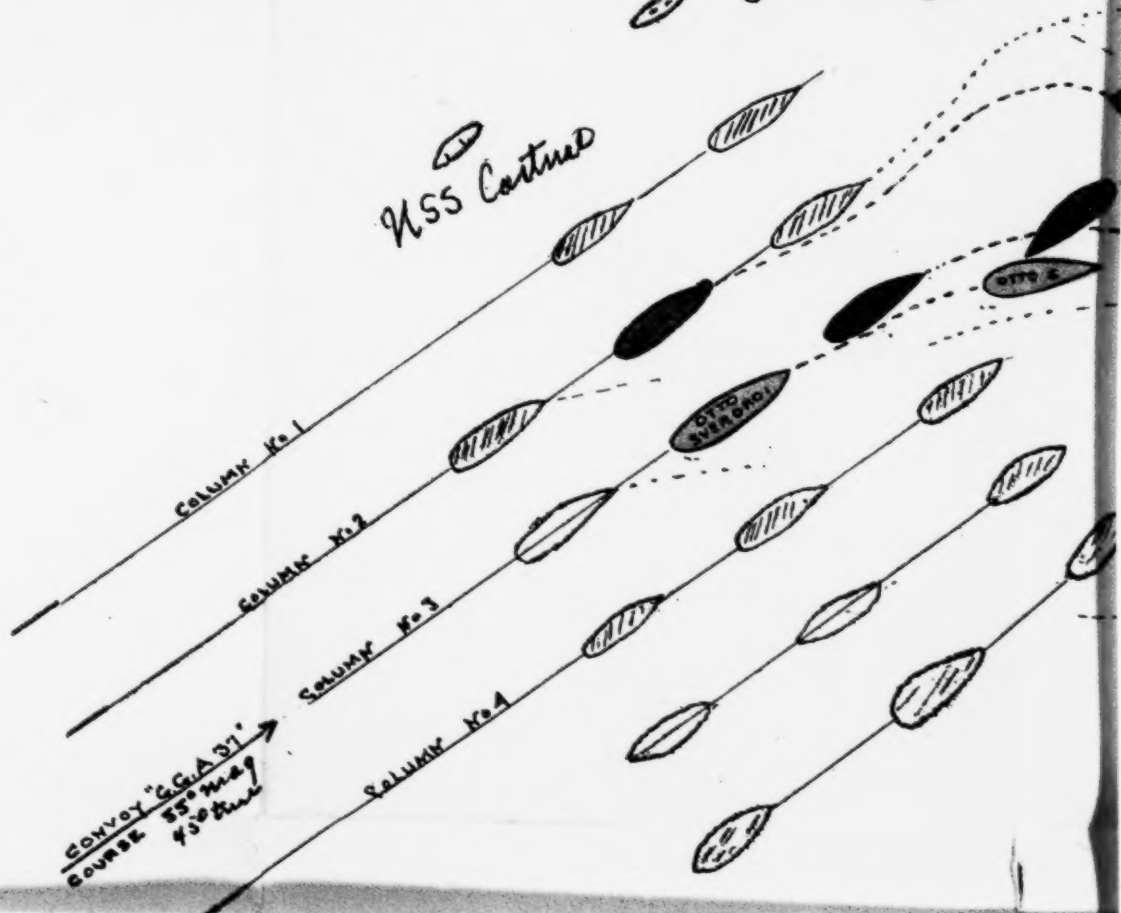
COLUMN No. 2

COLUMN No. 3

COLUMN No. 4

CONVOY "CGA 37"  
COURSE 55° mag  
450 kts

MAGNETIC ROSE



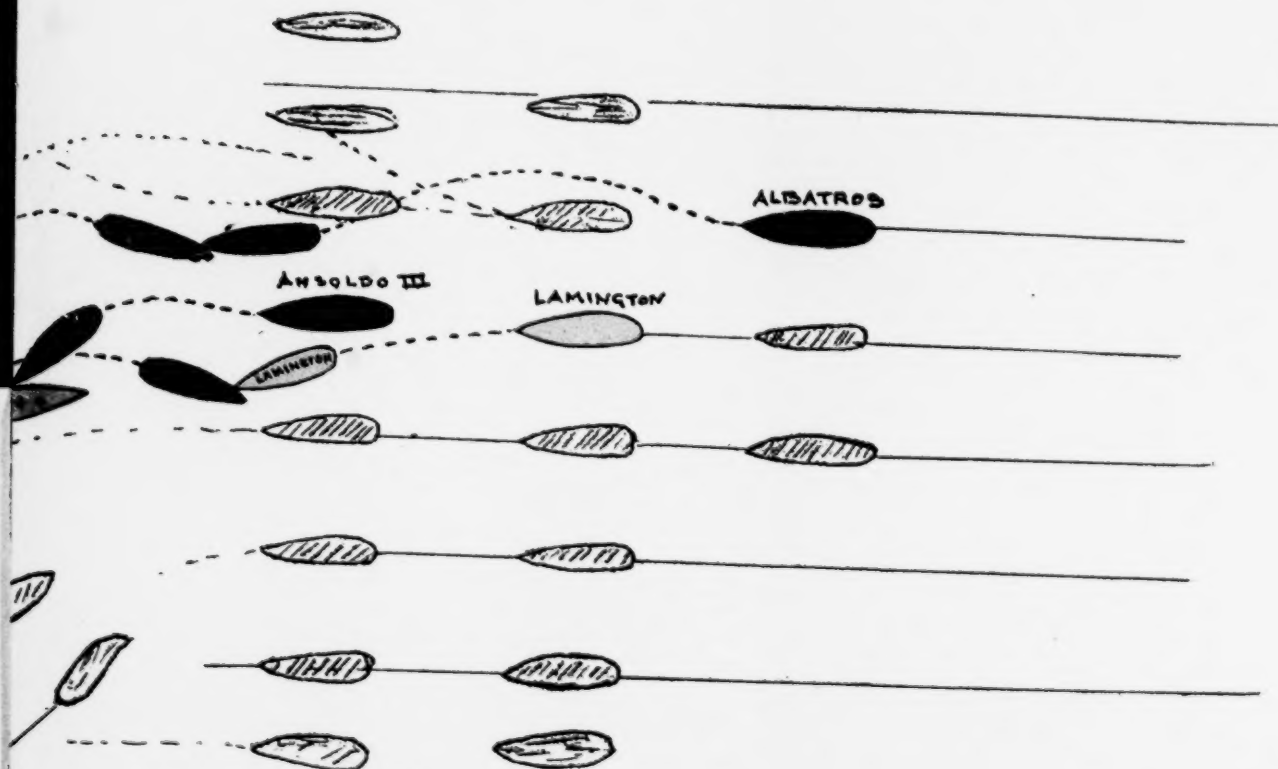


LONG. 7° 52' E

No. 10.

115

U.S.S. Yankton



CONVOY GAG  
COURSE 271°  
26/4



QUESTIONS OF THE  
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*Documents Relating to the Italian Court Inquiry.*

## No. 11.

## Genoa Ryl. Civil Tribunal.

## Report on Sea Voyage.

On the 8th of the month of July, 1918, at 2 p. m. in Genoa and in the Chancery of the Civil Tribunal—Before us Avvo. Alfredo Colizzi, Judge Delegate, assisted by the undersigned Clerk of the Court:

Has appeared Mr. Gerolamo Bologna son of the late Angelo, 43 years of age, born at Genoa, commander of the Italian steamship "Napoli," 5,798 tons burthen, with a crew of 124 individuals himself included, as declared.

Which appearer wishing to act in accordance with article 516 of the Code of Commerce, has made his report in the following terms:

On the 13th June 1918, 1.30 p. m. we left New York with said vessel watertight and provided with all necessities, spare and for use, laden with sundry goods (copper, pigiron, lard, salmon, etc.) During the night of 4th to 5th July at midnight in latitude 43 N., Longitude 7:58 E. Greenwich, we were proceeding from Gibraltar to Genoa in convoy with other 18 steamers. The "Napoli" had on board as Commodore and Chief of the Convoy a Royal Navy Commander. Towards 11.30 Greenwich time, midnight on board, on the bridge being the Commodore, the undersigned lieutenant R. N., the watch officer Mr. Rocco Gardella, there appeared ahead at a distance of about one thousand metres a group of steamers whose

117 course was apparently almost in opposite direction to ours.

The weather was somewhat hazy, the sea calm, wind slight from W. I judge the visibility was about a mile. Our speed was seven miles and half.

Both we and the steamers that were coming towards us were navigating with lights out (extinguished). At a very slight distance, seeing that it was the case of a convoy really coming on an opposite course in to the middle of our formation and that they had lit and there appeared red lights, I at once had our side lights lit blowing one blast of whistle, namely, I am going to starboard and conveniently manœvred in that sense with engines and rudder so as to show to the others who were approaching us our red light in order to indicate my manœvre to keep to the right according to the rules for preventing collisions and I succeeded by manœvring to clear three steamers which had passed us side to side at a very small distance thus avoiding any damage. The confusion was such that I don't know what happened with the other steamers of our convoy. After having avoided the first steamers of the other convoy, the second ones following at a very brief distance and as the possibility, to each, failed, of carrying out a regular and easy manœvre as the



steamers were crossing in all directions I was obliged to stop my engine.

At this moment having seen that a steamer at a distance of about 150 metres was steering upon us on port side, showing his green light, I had the helm put all to port and engines astern in order to try and reduce the consequences of the inevitable collision, more especially as ahead of us was lying crossways a large steamer of our convoy.

I note that the steamer that ran into us had - speed of about six miles. She was light. I don't know her name or nationality. The said steamer without manœuvring and continuing on her course struck the "Napoli" in a few seconds forward of centre on port side and precisely in hold No. 3. The collision had most serious consequences for the steamer "Napoli" owing to the rent she began taking a list to port and the bows gradually began to sink.

At the moment of the collision the engines had already been stopped and the rudder was all to port so that the steamer had lost her headway. The steamer that ran into us had a straight bow with buffer above. Said steamer sustained in the collision a wide crushing of her bows from about half a metre below the hawsepipe.

As soon as the collision occurred and we had taken account of the casualty and the imminence of foundering, which was certain, I gave orders in the engineroom to open all the valves (safety valves) so as to blow off the steam and to the radiotelegraph to give the signal S. O. S., to lower the boats with the crew and to keep near the ship. The engine room hands had by my orders come on deck.

After having ascertained that all the crew had got into the boats and nobody remained on board, I, the Commodore, a helmsman, Gentile Francesco and the waiter Melne Oreste, have inspected the leak, going also over the several quarters so as to more surely ascertain that nobody remained on board; I myself sent the last signals of distress with the head light; called the steamer "Tocra" escort vessel, who was not aware of the casualty, and ordered her not to move from the spot of the disaster and that I would make an attempt if possible of towing the steamer. The "Tocra" answered "all right." Meanwhile the steamer was gradually sinking and at 1.15 a. m. (ship's time) we got into a boat. I had the time of getting on board the "Tocra" and at 1:30 the steamer "Napoli" had disappeared leaving on the water 4 motorboats which had previously been unlashd and the life rafts. I then ordered the lifeboats to discharge their crews into the "Tocra." On board of this vessel we ascertained that one man was missing, viz. Cirino Filippo, coal heaver, who, I suppose, jumped into the water and was drowned. This is also what I heard said by his companions. I had proposed to the "Tocra" to take our empty boats in tow, but afterwards we thought it convenient to leave them. As to the motorboats I was informed that the commander of the "Tocra" signalled to the North American warship acting as escort, to recover them. The "Tocra" also telegraphed to the Traffic Defense of Genoa to provide for said recovery. In the shipwreck were completely lost with the ship, besides the cargo, the private documents of the ship; the mail and all



the crew's effects. I was able to recover the crew's matriculation books, ship's articles, register, and logbook, part first as well as the sum of Italian Lire 691 belonging to the ship's funds in my hands. With the steamer were lost also the two 76 mm. guns and the other 120 mm. gun. I protest against the running down steamer her captain and owner and against whoever it may concern both for the ship cargo and crew.

Picked up by the "Tocra" we proceeded on our voyage, arriving at Genoa on the 5th instant. Having thus stated the casualty I complete my report of the voyage remarking that on leaving the port of New York we stopped near the Lightship of Ambrose Channel and then having formed the convoy we proceeded without anything worthy of remark until 8 a. m. of the 14th, which the convoy broke up; we continued our voyage with the National steamer "Splendor" with fine weather and instructions were in all ways carried out. From the 16th to 17th sea rough, showers of rain, rolling and pitching which last from 17th to 18th and without further incidents except rough sea at times heavy rains and pitching and rolling we on the 22nd get threatening weather and heavy sea and strong wind from the N. E., the sea often flooding the deck. Rough movements of pitching and rolling strain the ship. The motorboats on deck are in danger.

We take all measures to avoid damages and accidents. In the afternoon of the 23rd we are in real gale with violent reavy rain, impetuous wind raises the sea which breaks on deck.

The engines suffer heavy shocks as also the rudder through the waves striking against it. The usual water is pumped out of the bilges and this continued during the whole night to 24th, 121 owing to the irregular working of the pumps through the continued movements of the steamer. The water extracted showed traces of matters forming the cargo. At daybreak the weather tends to improve, the elements are calming down and as 9 the bilges being normal we stop pumping. The sea however continues to be rough and produced considerable rolling and pitching. Without other incidents with various winds and sea we on the 28th anchor at Gibraltar. Having carried out what was required we at 9 a. m. of the 30th leave with a convoy and with various winds, sea at times rough and consequent rolling and pitching, weather on the whole fine, without any news always in the convoy we at midnight of 4th July come to the point of my previous narrative relating to the sudden collision which led to the sinking of the vessel, subordinately to this and for a scruple of exactness I should wish to remark that owing to the stormy sea experienced, water pumped with traces of cargo, rolling and pitching the cargo might have been anyhow wholly or partly more or less damaged and short, as also other damage might have been found in the ship by collision at New York, all as shown in logbook. Besides ample reserves are made for whatever else may concern both cargo, ship and crew, respect of all rights against whomsoever and however it may by law concern, rejecting all responsibility.



For more detailed particulars of the voyage I refer to my log book, which I hand in for signature.

122 I finally declare that by these presents I intend to protest against whoever it may concern for all damage and loss already verified or, that may be later on ascertained both in the cargo and ship, which losses and damages for which I reject on my own behalf and that of my crew every responsibility, as they cannot in any way be attributed to our fault or negligence.

And the foregoing having been read to the declarer as his own report, he has signed same.

On the original signed G. Bologna.

(Signed)

The Judge Delegate, A. COLLIZZI.

(Signed)

The Clerk of the Court, DARDANO.

Here follows the verification of the above report.

The following members of the crew appear before the Judge and after having been sworn and each interrogates separately:

Zolesi Italo fu Nicolo; 41 years of age, born & domiciled at Sestri; Levante, Chief officer;

Cardella Rocco, son of Domenico, Antonio, 32 years of age, born & domiciled at Elena, Third officer;

123 Pagano Leonardo, son of Luigi, 21 years of age, born & domiciled at Sestri; II electrical of ship;

Palomba Tobia of Phillip, 38 years of age, born & domiciled at Torre del Greco, seaman.

The foregoing report having been read to them, on our interpolation them—the Captain being absent as well as anybody interested, they, one after the other, and severally declared:

The first named: "I fully confirm the report read to me."

The second " "What is stated in the report read to me is true."

The third " "The foregoing report is exact and faithful and I confirm it in all its parts."

The fourth " "I approve and confirm the report read to me having nothing to alter, take from or add to it or modify."

Each party signing under his declaration.

Here follow the closing and signature of the Court.



124

No. 12.

Translation.

*Copy of Act No. 15506 of the Repertory.*

Sworn Attestation.

Victor Emanuel III, by the Grace of God and by the Will of the Nation King of Italy.

On the 12th of the month of September 1919 in one of the halls of the palazzo della Meridiana in the same named Piazza, Before me Dr. Edward Bernabo-Brea, royal Notary residing in Genoa, entered at the Notarial College of this City, at the request of Messrs. Parker, Garrett & Co. of London, who desire that the present Act remain in its original deposited with me, have personally appeared Messieurs:

Landi Pasquale di Cristoforo, barn and domiciled at Genoa, second officer of the steamer Napoli,

Tuo Odoacre fu Giovanni, born at Sampierdarend and there residing, first engineer of the said steamer Napoli,

Chevalier Gerolamo Bologna fu Angelo, born and domiciled at Genoa, Commander of the steamship Napoli, and

125 Giovanni Paolo Barratta fu Carlo, born at Castelnuovo Bormida, domiciled at Genoa, Marine Inspector, of whose personal identity I am personally certain, assembled here for the purpose of being interrogated on the following fifteen questions:

1. Names of the vessels and of their respective commanders.
2. When the collision occur-ed.
3. Where did the collision take place.
4. Direction and force of the wind.
5. State of the weather.
6. State and force of the tide.
7. The course and speed of the vessel when the other was sighted.
8. What lights (if any) carried by her.
9. Distance and bearing of the other vessel when first seen.
10. Lights (if any) shown by the other vessel when sighted.
11. Whether any lights of the other vessel other than those seen when first sighted came into view before the collision.
- 126 12. What steps were taken, and when to prevent the collision.
13. The parts of each vessel that first came into contact.



14. What signals by sound (if any) and when given.

15. What signals were heard coming from the other vessel (if any) and when;

In connection with the collision that occurred during the night between the fourth and fifth July nineteen hundred and eighteen between the steamship Napoli and another steamer.

Having previously admonished them seriously as to the importance morally of an oath, on the religious bond that believers contract by it before God, the obligation to tell the truth, and the penalties inflicted by law on false or reticent witnesses, each separately has sworn: "I swear to tell the truth, the whole truth and nothing but the truth."

Then Mr. Tuo Odoacre following my request declares that, being in his berth at the moment of the collision, he cannot answer to all the questions; he only saw the colliding steamer pass by, when after the collision he went out of his berth.

To the seventh question, as first engineer he can answer that the speed of the vessel was at the time of the collision seven and a half miles. He adds besides that whilst he was in his berth, before the collision he heard a short blast of the Napoli's whistle, and  
127 that heard from his berth, before the collision, the manœuvring of the engines.

Read this act to the witness, he confirms and signs it:

(Signed)

TUO ODOACRE.

Mr. Landi Pasquale, to the first question says that the ship run into was the Napoli commanded by Chevalier Bologna Gerolamo. He cannot say what the name of the other one was as during war the names are cancelled; he can only say that she had on her bows an apparatus which he presumes was a mine or bowstriking protector.

2. The collision occurred at midnight between the fourth and fifth of July nineteen hundred and eighteen.

3. The collision took place in forty-three north, longitude seven degrees and fifty-eight minutes east of Greenwich.

4. Wind westerly force number two (Italian graduation).

5. Weather hazy.

6. Cannot answer.

128 7. Course, he believes, but is not certain, towards north east approximately; speed of the convoy about seven and a half miles.

8. Lights extinguished before sighting.

9. The colliding steamer was sighted at about two thirds of a mile, almost ahead, slightly to port.



10. Did not see the lights of the other vessel because not being on the upper bridge but on the port side promenade deck ready to mount watch, he was observing other steamers that had passed near.

11. Does not remember.

12. Heard a short blast of whistle, but cannot state anything else with certainty. He knows the steamer had reduced her speed.

13. The port side of the "Napoli" was struck in the proximity of hold No. three, below the forward bridge, by the bow of the colliding vessel.

14. Heard a short blast of whistle from steamer Napoli before the collision.

15. Heard no signal.

The present act having been read by me to the declarer was confirmed and signed by him.

(Signed)

LANDI PASQUALE.

129 Subsequently the Commander Chevalier Gerolamo Bologna interrogated by me on all the fifteen questions answered to each as follows:

1. Ship run into, the Napoli, under his command; colliding vessel unknown both as to name and nationality at the time of the collision.

2. At midnight of fourth July nineteen hundred and eighteen.

3. At forty-three degrees north latitude and longitude seven degrees and fifty-eight minutes east of Greenwich, at about seventy miles from Genoa.

4. Slight wind from the west.

5. Sea calm and hazy.

6. Unknown.

7. Course completely contrary to that of the colliding convoy, speed seven and half miles.

8. All the lights were extinguished.

9. The other vessel was sighted at about one hundred and fifty metres on the port side forward (ahead).

10. The vessel when sighted showed her green light, whilst I at the same time showed the red light.

110 11. At a distance of about 1000 metres when the black mass of the convoy was perceived, contemporaneously the lights were lit by me and by the other convoy.

12. At the moment of lighting the lights I gave a blast of the whistle to indicate that I was bearing down to starboard and con-



sequently I showed my red light to the approaching steamers, so that I had already cleared three of them.

Before the collision I stopped the engines, then I put engines astern, manœuvring conveniently with the rudder so as to reduce the force of the blow, because the collision was inevitable, to diminish the effects thereof.

13. Of the Napoli the port side, forward, between hold number two and number three; of the colliding vessel the bows heavily crushed in about fifty centimetres below the anchor hawse-pipes.

14. I blew a blast of whistle to indicate I am going to starboard.

15. I did not hear any sound signal proceeding from the other vessel.

The present act read by me to the declarer is signed and confirmed by him.

(Signed)

GEROLAMO BOLOGNA.

131 Finally Mr. Giovanni Paolo Baratta, as inspector in Genoa of the Transoceanica Company, interrogated by me on all the questions above mentioned, answers as follows:

That by his own knowledge he can say nothing, but that on receiving the crew coming from the wrecked ship, and having interrogated the single persons of the crew and officers he derived that everything was done in the best way that was necessary for avoiding the collision which caused the shipwreck and that he considers that if the other vessel had manœuvred as she should have, even if it had not prevented the collision, it would certainly have reduced the damage.

After reading this act to the declarer it is confirmed and signed by him.

(Signed)

GIOVANNI PAOLO BARATTA.

And of all this I, the Notary requested have drawn up this verbal written by me on two whole sheets of stamped paper and on two pages of a third one. This verbal commenced at 2 p. m. is closed at four.

(Signed)

DOTT. EDUARDO BERNABO-BREA,

Notary.

Registered at Genoa this 15th of September, 1919, No. 1966, Lire 3.20.

132 Copy in conformity with the original of which each sheet is signed in accordance with the requirements of the law.

Genoa 15th September, 1919.

(Signature) DOTT. EDUARDO BERNABO-BREA. [L. S.]

Notary.

[L. S.] Legalization of signature by British Consulate General.

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*depositions of the members of the Ship's Company of the Italian S. S. Napoli Taken Before Dr. Edward Bernabo-Brea, Notary Public, at Genoa, September 12th, 1919, Taken from Translation from Act 15506 of the Repertory of said Notary Public.*

First. TUO ODOACRE FU GIOVANNI, born at Sampierdarend, and here residing, first engineer of the said steamer Napoli, being duly sworn, declares:

That being in his berth at the moment of the collision he cannot answer to all the questions; he only saw the colliding steamer pass by, when after the collision he went out of his berth.

Q. 7. The course and speed of the vessel when the other was sighted.

A. Course, he believes, but is not certain, towards northeast approximately; speed of the convoy about seven and a half miles. 133 He adds besides, that whilst he was in his berth before the collision he heard a short blast of the Napoli's whistle, and that he heard from his berth before the collision the manœuvring of the engines.

LANDI PASQUALE DI CHRISTOFORO, born and domiciled at Genoa, second officer of the steamer Napoli.

Q. 1. Names of the vessels and of their respective commanders.

A. Napoli commanded by Chevalier Bologna Gerolamo. He cannot say what the name of the other one was as during war the names are cancelled; he can only say that she had on her bows an apparatus which he presumes to be a mine or bowstriking protector.

Q. 2. When the collision occurred.

A. The collision occurred at midnight between the fourth and fifth of July nineteen hundred and eighteen.

Q. 3. Where did the collision take place?

A. The collision took place in forty three north, longitude seven degrees and fifty eight minutes east of Greenwich.

Q. 4. Direction and force of the wind.

A. Wind westerly force number two (Italian graduation).

Q. 5. State of the weather.

A. Weather hazy.

134 Q. 6. State and force of the tide.

A. Cannot answer.

Q. 7. The course and speed of the vessel when the other was sighted.

A. Course, he believes, but is not certain towards northeast approximately; speed of the convoy about seven and a half miles.

Q. 8. What lights, if any, carried by her?

A. Lights extinguished before sighting.

Q. 9. Distance and bearing of the other vessel when first seen.

A. The colliding steamer was sighted at about two thirds of a mile almost ahead, slightly to port.



Q. 10. Lights, if any, shown by the other vessel when first seen.

A. Did not see the lights of the other vessel because not being on the upper bridge but on the port side promenade deck ready to mount watch, he was observing other steamers that had passed near.

Q. 11. Whether any lights of the other vessel other than those seen when first sighted came into view before the collision.

A. Does not remember.

Q. 12. What steps were taken, and when to prevent the collision.

A. Heard a short blast of whistle, but cannot state anything else with certainty. He knows the steamer had reduced her speed.

Q. 13. The parts of each vessel that first came into contact.

A. The port side of the Napoli was struck in the proximity of hold No. three, below the forward bridge, by the bow of the colliding vessel.

Q. 14. What signals by sound, if any, and when given?

135 A. Heard a short blast of whistle from the steamer Napoli before the collision.

Q. 15. What signals were heard coming from the other vessel, if any, and when?

A. Heard no signal.

Chevalier GEROLAMO BOLAGNA FU ANGELO, born and domiciled at Genoa, Commander of the steamship Napoli:

Q. 1. Names of the vessels and of their respective commanders.

A. Ship run into, the Napoli, under his command; colliding vessel unknown both as to name and nationality at the time of the collision.

Q. 2. When the collision occurred.

A. At midnight of fourth July nineteen hundred and eighteen.

Q. 3. Where did the collision take place?

A. At forty three degrees North latitude and longitude seven degrees and fifty eight minutes east of Greenwich, at about seventy miles from Genoa.

Q. 4. Direction and force of the wind.

A. Slight wind from the west.

Q. 5. State of the weather.

A. Sea calm and hazy.

Q. 6. State and force of the tide.

A. Unknown.

Q. 7. The course and speed of the vessel when the other was sighted.

136 A. Course completely contrary to that of the colliding convoy, speed seven and half miles.

Q. 8. What lights, if any, carried by her?

A. All the lights were extinguished.

Q. 9. Distance and bearing of the other vessel when first seen.

A. The other vessel was sighted at about one hundred and fifty metres on the port side forward ahead.

Q. 10. Lights, if any, shown by the other vessel when sighted.



A. The vessel when sighted showed her green light, whilst I at the same time showed the red light.

Q. 11. Whether any lights of the other vessel other than those seen when first sighted came into view before the collision.

A. At a distance of about 1,000 metres when the black mass of the convoy was perceived, contemporaneously the lights were lit by me and by the other convoy.

Q. 12. What steps were taken, if any, and when given?

A. At the moment of lighting the lights I gave a blast of the whistle to indicate that I was bearing down to starboard and consequently I showed my red light to the approaching steamers, so that I had already cleared three of them.

Before the collision I stopped the engines, then I put engines astern, manœuvring conveniently with the rudder so as to reduce the force of the blow, because the collision was inevitable, to diminish the effects thereof.

137 Q. 13. The parts of each vessel that first came into contact.

A. Of the Napoli the port side, forward, between hold number two and number three; of the colliding vessel the bows heavily crushed in about fifty centimetres below the anchor hawse pipes.

Q. 14. What signals by sound, if any, and when given?

A. I blew a blast of whistle to indicate I am going to starboard.

Q. 15. What signals were heard coming from the other vessel, if any, and when?

A. I did not hear any sound signal proceeding from the other vessel.

GIOVANNI PAOLO BARATTA FU CARLO, born at Castelnuovo Bomida, domiciled at Genoa, Marine Inspector of the Transoceanica Company, interrogated on all the questions above mentioned, answers as follows:

A. That by his own knowledge he can say nothing, but that on receiving the crew coming from the wrecked ship, and having interrogated the single persons of the crew and officers he derived that everything was done in the best way that was necessary for avoiding the collision which caused the shipwreck and that he considers that if the other vessel had manœuvred as she should have, even if it had not prevented the collision, it would certainly have reduced the damage.



(Translated from Italian.)

## Ministry of Marine.

Office for the Defence of the National Maritime Traffic.

*Report of Commission of Inquiry.*

Descrip. & name of ship. D. W. tonnage.	Nature & consequences of accident or enemy's action.	Date & locality of accident or enemy's action.
S.S. "Lamington."	Collision and subsequent sinking of the S.S. "Napoli" and damage to the other five steamers.	Night from 4th to 5th July at a point 4 <sup>1</sup> / <sub>2</sub> Lat. N. 7° 52' Long. E. Gr.
" " "Ansaldo III."		
" " "Hjelfjord."		
" " "Napoli."		
" " "Albatros."		
" " "Otto Sverdrup."		

## Report of the Proceedings of the Commission—Summary Report—Technical Observations—Conclusion.

In the year one thousand nine hundred and eighteen the 21st day of August in the offices of the Headquarters of the Traffic Defense of Genoa the following Commission was held:

Captain Enrico Cuturi, Chairman;  
Commander Elia Volpe, Commissioner;  
Harbour Lieut. Carlo Massa, do.  
Ship's Lieut. Gaetano Costanzo, Secretary,

139 to proceed to an enquiry as to the collisions which took place during the night from the 4th to the 5th of July 1918 in 43° N. Lat. 7° 52' Long. E. Gr. reciprocally between the steamers "Napoli" "Otto Sverdrup" "Hjelfjord" belonging to the convoy G. G. A. 37 and the steamers "Lamington" "Ansaldo III" "Albatros" belonging to the convoy G. A. G. 36 and to ascertain any eventual responsibility of their respective commanders.

The Commission, after questioning the crew, as per form 4 partly direct and partly through other Naval Military Authorities, and having seen the reports sent in by the Commanders ascertained the following:

About midnight of July 4th two convoys were navigating along the following magnetic courses: Convoy G. G. A. 37 at 55° and convoy G. A. G. 36 at 271°.

The position of the steamers in the formation was as follows:

"Napoli" with the Commodore of the 3rd on the left (?) of the G. G. A. 37;

"Otto Sverdrup" in the successive place of the 3rd column, and "Hjelfjord" on the left side of S. S. "Sverdrup,"



"Ansaldo III," with the Commodore of the left 4th column (?) of the G. A. G. 36;

"Lamington," second in the column, and

"Albatros" third in the 5th column.

Weather conditions: calm sea, foggy-weather, visibility about a mile. About midnight the two convoys being very close to one another but at a distance which cannot be determined, sighted each other and the ships which were navigating with lights out put them on immediately.

Owing to the short distance between the two convoys, the courses whereof were bringing them to meet at the point of the co-ordinates aforesaid, it was not possible for the two convoys to manoeuvre and bear at the same time to the convenient side in order to avoid a collision. Nor was it possible to stop the two convoys because in the instructions given no provision was made for a luminous emergency signal to order such a manoeuvre.

No general manoeuvre, on the other hand, being possible, each Commander manoeuvred separately endeavoring to avoid the collision.

The S. S. "Napoli" after avoiding three steamers sighted a green light about 30° ahead on the left port side, and as she could not bear to the starboard for fear of investing a steamer laden with explosives forming part of the same convoy and close by on this side, reversed the engines, putting first astern to port then to starboard and finally stopped hoping that the steamer showing the green light would succeed in passing ahead of her or would manoeuvre in any other way to avoid a collision.

This was of no avail as the collision occurred all the same causing such a rent that the steamer "Napoli" sank at 1.30 in the morning of the 5th.

The Commander of the investing steamer i. e. the S. S. "Lamington" alleges on the other hand that he saw on the starboard bow a green light very near one quarter elevation. He turned therefore to port to increase the elevation of the green light which he alleges suddenly was changed into a red one and it was then that the collision became inevitable.

According to the report of the Commander of the s.s. "Lamington" the engine was promptly put full astern but the ship was struck by the port side of the s.s. "Napoli" suffering serious damage.

The Commission are of opinion that of the two statements the first one being confirmed by the chief of the convoy—the most reliable is the one of the s.s. "Napoli" because it is not conceivable that in a short period of time the "Napoli" which was going at a very slow speed could manoeuvre to such an extent as to show the green light one quarter of elevation from the bow, on the starboard side of the s.s. "Lamington" then the red light and finally to strike the said ship with her side.

In that confusion of boats it is possible that the green light sighted by the "Lamington" belonged to some other ship than the s.s. "Napoli" and that by manoeuvring and bearing to port to avoid her



she (the "Lamington") got very near to the red light of the s.s. "Napoli" at a moment when any manœuvre to avoid a collision had become useless.

The rent in the s.s. "Napoli" owing also to the structure of the watertight bulkheads, caused such a rush of water into the

142 steamer as to make all salvage operations impossible.

The crew of the s.s. "Napoli" kept sufficiently calm and disciplined and even though one has to lament the loss of the bunkerman Filippo Cerrini, this cannot be attributed to the fault of any member of the crew.

The behavior of the Captain, in the opinion of the Commodore was splendid and praiseworthy.

The Commission decide not to take into consideration the Captain's report as to the boats having pulled away from the steamer's side and more especially the one manned by the 1st officer, because in moments of so much excitement, it was not possible from the ship fairly to judge the distance, the same as it was not possible for the boats amidst the noise of the crashing material, of the steam violently escaping from the pipes, of the whistling of the manœuvring steamers and of the orders and counterorders given in the boats themselves, to hear the orders shouted from the deck of the s.s. "Napoli."

Therefore the Commission are of opinion that the first officer, Mr. Zolessi, acted regularly.

The s.s. "Otto Sverdrup" seeing the s.s. "Napoli" bearing to starboard followed in her wake executing the same manœuvre. Immediately after she had modified her course, however, she saw on her port side a red light and showing her side lights she increased her bearing to starboard.

But the ship that had shown the red light got gradually nearer, the red light disappeared to be replaced by a green one and

143 the "Otto Sverdrup" was struck on the port side amidship.

According to the Commander of the investing steamer the s.s. "Ansaldo III" whilst she was bearing to port to avoid a steamer a red light quite close on the starboard side was sighted and it being absolutely impossible to bear to starboard, she continued to bear to port giving the two regulation whistles. The reason for such an impossibility is not stated but from the declaration of the Commander of the s.s. "Hjelfjord" it is clear that if the s.s. "Ansaldo III" had borne to starboard she would have struck the s.s. "Hjelfjord."

Seeing that a collision was imminent, he put the engines full astern, without, however succeeding in avoiding her.

The Commission consider the declaration of the Commander of the s.s. "Otto Sverdrup" more reliable, it being confirmed by the report of the chief of the G. A. G. 36 convoy and by the declaration of the Commander of the s.s. "Hjelfjord" who states that he avoided a steamer which, in his opinion was going to invest another.

The Commander of the s.s. "Ansaldo III" seeing that he was prevented from manœuvring on both sides, ought to have endeavored to stop his steamer by reversing the engines and giving the three

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regulation whistles to warn the ships in the vicinity. All that the Commander of the s.s. "Sverdrup" could do was to continue  
144 to bear to starboard putting the engine full ahead; and this he did.

The s.s. "Albatros" sighted on the starboard bow a red light and another red light on the port bow. In order to leave room to the red light on the starboard side she bore conveniently to starboard but shortly after the green light appeared instead of the red one and a short distance off his ship was struck by the s.s. "Hjelfjord." After bearing to port to avoid the s.s. "Ansaldo III" she bore to starboard to take her place again in the formation, but seeing a dark mass crossing her bow ahead, notwithstanding that she had reduced her speed to a minimum, she struck the s.s. "Albatros" on the port side. The manœuvring of the s.s. "Albatros" was correct, but one fails to understand why she continued to keep her lights out.

The investing steamer could have stopped her engine and put it astern, but it is not to be excluded that had she seen the lights of the s.s. "Albatros" she could have effected some other manœuvre in order to avoid the collision.

After the collision had taken place the s.s. "Otto Sverdrup" was assisted by the escorting American warship and taken in tow by the latter she made for Oneglia and as it was seen that she would have sunk before reaching Savona, she was smoothly run aground on the sands in front of the harbour of Oneglia, which she could not have entered owing to her heavy draft.

The s.s. "Hjelfjord" continued on her course and coming up with the convoy on the morning of the 5th she arrived later in the port of Genoa.

145 The s.s. "Ansaldo III" after having transferred the chief of the convoy on the American warship "Yankton" acting upon the orders of the chief of the convoy himself, on the morning of the 5th made for Marseilles together with the s.s. "Albatros" and the s.s. "Lamington."

There are no data available as to the manœuvre executed by all the other steamers of the two convoys, so that there is a lack of evidence from which to judge to what extent such manœuvres had any detrimental influence on those of the invested ships; it is certain however that this influence occurred as it appears from the declarations made.

From the foregoing the Commission are of opinion that the collisions which occurred may have been caused by the hampered manœuvring of all the steamers but especially by the uncertain manœuvres of the s.s. "Lamington," "Ansaldo III" and "Hjelfjord" and reprimand the Commander of the "Albatros" for not showing the navigation lights.

The Commission however feel it their duty to point out the circumstances under which the manœuvres in question had to be executed and are of opinion that the anxiety of the Commanders must have been very great because, besides having to avoid the steamers ahead they had also to see to avoid being struck by those astern.

Moreover the sudden appearing of so many lights, the noise of so



many sound signals directing the manœuvres must necessarily have generated a confusion which was entirely to the disadvantage of the necessary calm which every Commander had to preserve in order to avoid collisions which appeared impending from all sides.

146

## THE COMMISSION.

The Captain, Chairman,  
(Sgd.)

ENRICO CUTIRI.

The Commander, Commissioner,  
(Sgd.)

ELIA VOLPE.

Harbour Lieutenant, Commissioner,  
(Sgd.)

CARLO MASSA.

Reserve Ship's Lieutenant, Secretary,  
(Sgd.)

G. COSTANZA.

147

No. 14.

(Letterhead of Royal Italian Embassy.)

N.

June 2, 1920.

Messrs. Harrington, Bigham & Englar,  
Counsellors at Law,  
64 Wall Street, N. Y.

GENTLEMEN:

In compliance with your request of March 5th to the Italian Ministry of Marine, Rome, asking information on the eventual reports presented by the officers of the Italian Navy, regarding the shipwreck of the steamer "Naples" on July 4/5 1918, following a collision, I have been instructed to advise you that, as this information is considered confidential, it is impossible, therefore, to grant your request.

Sincerely yours,

CIVALLERI.

148

*Documents Relating to the British Investigation.*

No. 15.

19th September, 1919.

Messrs. Harrington, Bigham &amp; Englar.

GENTLEMEN:

In reply to your letter of the 21st of May last asking for information concerning the loss of the s.s. "Napoli" in collision on the night of the 13th of June 1918, I am commanded by My Lords Commissioners of the Admiralty to inform you that the "Napoli" was sailing in convoy without navigational lights; the night was moonless and somewhat misty, though it was calm and cloudless. Shortly before 2330 the convoy met a second convoy proceeding from



Gibraltar to Genoa, which had shortly before been attacked by one or more enemy submarines. The two convoys did not sight one another in time to pass clear. A number of ships turned on navigational lights and there was a great confusion of steam whistles. Some ships passed right through the lines of the other convoy but several collisions occurred, four ships including the "Napoli" of the "Napoli's" convoy being damaged.

I am to suggest that if the American Underwriters of the "Napoli" were to apply to the United States Navy Dept. they might be able to obtain fuller particulars of the incident as the U. S. "Yank-ton" was senior vessel of the escort of the convoy sailing from Gibraltar to Genoa. I am to express regret that an answer to your letter has been delayed.

I am, Gentlemen,

Your Obedient Servant,  
(Signed)

H. EASTWOOD,  
*For Secretary.*

L. P.—No. 8.

In any further communication on the subject, please quote N. L. 12301, and address letter to The Secretary, Admiralty; Admiralty, Whitehall, London, S. W. 1.

10th July, 1920.

GENTLEMEN:

With reference to your letter of the 24th ultimo and previous correspondence relative to the loss of the S.S. "Napoli", I am commanded by My Lords Commissioners of the Admiralty to acquaint you that there are no convoy orders which will give the information now presumed to be required, viz: the action of the "Napoli" and the S.S. "Lamington" on the meeting of the two convoys.

From information received by Their Lordships it would appear that both vessels were in their correct station in 150 convoy, previous to the occurrence, and that no orders were signalled by the Commodore on the first intimation of the impending danger, owing to the time not admitting of any being given. Syrens were blown, and the "Napoli" turned to Port and the "Lamington" to starboard, with the result that they collided. Each vessel had to act as the Master considered best, both vessels, however, having other ships on either side of them and ships were steering in various directions to avoid each other as best they could.

I am, Gentlemen,

Your obedient Servant,

H. EASTWOOD,  
*For Secretary.*

Messrs. Harrington, Bigham & Englar, 5, Paper Buildings, Inner Temple, E. C. 4.  
(SCB.7567.)



151 N. L. 15620.

Address letter to The Secretary, Admiralty, Admiralty,  
Whitehall, London, S. W., 1.

10th September, 1920.

GENTLEMEN:

With reference to your letter of the 11th ultimo and previous correspondence relative to the loss of the s. s. Napoli I am commanded by My Lords commissioners of the Admiralty to inform you that they regret that they are unable to comply with your request to be furnished with the convoy orders for the convoys in question, for the primary reason that such orders do not exist in so far as suggested in your letter that the Masters of the vessels in convoy would be aware of the sailing orders issued to the Senior Officer.

2. With reference to paragraph 2 of your letter, as neither vessel lost contact, any special orders they received under seal would have remained unopened, so the point does not arise.

3. In the event of an attack by submarine, which occurred, the Masters of the vessels in convoy carried out the orders received from the Officer in charge of the convoy.

4. The Allied Signal Manual, in which is incorporated the orders that were in force in the Mediterranean at the time in  
152 question, gives the instructions for convoys when attacked by submarine.

5. As one of the convoys had been forced away from its route, owing to the presence of submarine, the routes followed by the convoys cannot be of any material assistance.

6. Admiralty Letter N. L. 12301 of the 10th July last and paragraph 1 of Admiralty Letter N.L./M18182 of the 19th September 1919 (with the exception of the date given in line 4) contain a precis of what occurred.

7. I am to add that Their Lordships have nothing to add that would be of any material assistance, relative to the points on which information is at present requested.

I am, Sir,

Your obedient Servant,

H. EASTWOOD,  
*For Secretary.*

153

N. L. 2461.

(Copy.)

Admiralty.

4th March, 1921.

GENTLEMEN:

With reference to your letter of the 14th ultimo, relative to the collision between the S. S. "Napoli" and the S.S. "Lamington," I am commanded by My Lords Commissioners of the Admiralty to in-



form you that reports made to the Admiralty by Officers in his Majesty's Service are confidential and for the use of the Admiralty only, and that they regret therefore that they are unable to comply with your request to be furnished with copies of such reports.

I am, Gentlemen,

Your obedient Servant,  
(Sd.)

W. M. BADDELEY.

Messrs. Godfrey Warr & Co., Palmerston House, 34, Old Broad Street, E. C. 2.  
SCB.3786.

154

Fol. 127. 1919.—C.—No. 376.

No. 16.

In the High Court of Justice.

Probate, Divorce, and Admiralty Division.

(Admiralty.)

Fos. 98.

COTONIFICI RIUNITI DI SALERNO and Another

v.

THE OWNERS OF THE STEAMSHIP "LAMINGTON."

The "Lamington."

*Examination of Witnesses on Behalf of the Plaintiffs, Taken Before R. S. Jackson, Esq., at 7 King's Bench Court, Temple, on Tuesday, the 25th of January, 1921.*

Mr. Lewis Noad, instructed by Messrs. Parker, Garrett and Co., appeared for the Plaintiffs.

Mr. Stephens, K. C., and Mr. Brightman, instructed by Messrs. William A. Crump & Son, appeared for the Defendants.

I, Richard Stephens Jackson, Examiner, hereby certify as follows:

On the 25th day of January 1921 previously to the examination of the Witnesses herein for the Plaintiffs, it was agreed between Mr. Lewis Noad, Counsel for the Plaintiffs, and Mr. Stephens, K. C., Counsel for the Defendants, that the evidence should be taken by a shorthand writer, and that the reading over and signing by the Witnesses of their depositions should be dispensed with. I then, having by consent of the said parties first duly sworn Edwin Rudge Pearce, shorthand writer, faithfully and correctly to take down and



transcribe the evidence to be given before me in this action, and administered the usual oath of an interpreter to John Charles Mardel, I, in the presence of the aforesaid Counsel, administered the usual oath of a witness to and caused to be examined the following witnesses who were produced before me on behalf of the Plaintiffs to give evidence in this action, namely, Gerolaino Bologna and Pasquala Landi.

Dated this 28th day of January 1921.

R. S. JACKSON,  
*Examiner.*

Edwin Rudge Pearce (Assistant to Cherer & Co., 8 New Court, Carey Street, W. C. 2), was sworn to act as Shorthand Writer.

John Charles Mardel was sworn as Interpreter.

155 Chevalier Gerolamo Bologna, sworn.

Examined by Mr. Lewis Noad:

- 1 Q. Is your name Gerolamo Bologna?  
A. Yes.
- 2 Q. Were you in command of the steamship "Napoli" at the time of this collision which occurred on the 4th of July 1918?  
A. Yes.
- 3 Q. Is the "Napoli" a large steamer of 9,210 tons gross?  
A. Yes.
- 4 Q. Did you sail from New York on 13th June bound in convoy, and did you go to Gibraltar. You sailing in convoy first and then, I think, the convoy was dispersed leaving New York, is that right?  
A. The convoy was formed at Gibraltar.
- 5 Q. I think you had a crew of 124, had you?  
A. Yes.
- 6 Q. At this time you had no passengers on board?  
A. No passengers.
- 7 Q. Leaving Gibraltar were you on a voyage to Genoa?  
A. Yes.
- 8 Q. How many vessels were there in the convoy leaving Gibraltar?  
A. 18.
- 9 Q. Of those steamers were they all bound to Genoa?  
A. No.
- 10 Q. Were some bound to Spezzia?  
A. Yes.
- 11 Q. How many were bound to Genoa?  
A. About 12 for Genoa.
- 12 Q. At the time of this collision were you in convoy?  
A. In convoy.
- 13 Q. How many vessels were in that convoy?  
A. 18.
- 14 Q. What was the shape of the convoy generally?  
A. A line of seven abreast first.



15 Q. Besides that what was there?

A. Three lines.

16 Q. There were four lines, or do you mean three altogether?

A. Three lines altogether.

17 Q. In the first line there were seven vessels?

A. Yes.

18 Q. In the second line, how many?

A. Five.

19 Q. In the third?

A. Five or six.

20 Q. You do not remember?

A. No.

21 Q. What was your position in the first line?

A. In the centre.

22 Q. That is to say, she had three vessels on her port hand and three on her starboard hand?

A. Yes.

23 Q. What distance there between the vessels at the sides?

A. About 200 metres.

24 Q. That is sideways; now fore and aft?

A. About 300 metres.

25 Q. Was the convoy being escorted by any vessels?

A. English, American and Italian and English war vessels, an American destroyer and a yacht and two Italian vessels.

26 Q. At the time of the collision what speed was the convoy going at?

A. About  $7\frac{1}{2}$  knots, my convoy.

27 Q. At the time you sighted the other convoy what course were you on?

A. N. 55 E., about.

28 Q. What sort of weather was it?

A. Dark weather.

29 Q. Was it clear?

A. Not clear, a little hazy.

30 Q. The course you have given me, N. 55 E., was that a course magnetic or a course true?

A. Magnetic.

31 Q. At what time did the collision take place?

A. About midnight.

32 Q. Were you on the bridge at the time of the collision?

A. Yes.

33 Q. How long had you been there on that occasion?

A. All night I stopped on the bridge.

34 Q. Were you on the bridge when that other convoy was first sighted?

A. Yes, I was.

156 35 Q. What was the first thing you saw of the other convoy?

A. I saw the looms of the ships.

36 Q. Of how many ships?

A. I cannot say how many.



- 37 Q. Where did those vessels bear from you, in what direction?  
 A. Just contrary to my course.
- 38 Q. That means you saw them right, right ahead in front of you?  
 A. Yes.
- 39 Q. And on each bow?  
 A. I saw them coming head on towards me a whole lot of them.
- 40 Q. How were they bearing, ahead and on each bow, or ahead and on one bow?  
 A. No, in the centre.
- 41 Q. You were apparently meeting the convoy right end on; is that what you mean?  
 A. Yes, end on.
- 42 Q. At that time, as I understand, you were on your course N. 55 E., going  $7\frac{1}{2}$  knots?  
 A. Yes.
- 43 Q. When you saw those vessels were they reported by anyone on board your vessel, had they been reported before, or were you the first to see them?  
 A. We saw them all at the same time.
- 44 Q. How far off do you estimate the vessel ahead of you was?  
 A. About half a mile, 1,000 metres.
- 45 Q. How far did the vessels stretch out on each bow right ahead; what was the extreme bearing?  
 A. I cannot tell.
- 46 Q. When you saw them, what was done on your vessel, if anything?  
 A. We immediately lit up our red light and ported our helm.
- 47 Q. When you say you lit up your red light, what kind of lights had you; were they electric lights?  
 A. Yes.
- 48 Q. Where did they switch on from?  
 A. From the bridge.
- 49 Q. Do you mean that you switched on all your lights, mast-head red and green?  
 A. All my lights.
- 50 Q. Did you then see any lights from the other vessels at once, did they switch on their lights, the vessels approaching in the other co-voy?  
 A. They lit up their red lights, we could see the red lights and the white head lights.
- 51 Q. Did you at that time see anything but red lights on the other convoy, or were they all red lights that you saw?  
 A. The majority were red lights.
- 52 Q. Did you see any green lights?  
 A. I may have seen but I do not remember, I was busy handling my ship.
- 53 Q. Could you see whether the other vessels in your convoy switched on their lights the same time that you did?  
 A. I do not know.

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54 Q. After you had switched on your lights did you do anything with your helm and engines?

A. I began to slow down my speed and I altered my helm accordingly to manœuvre past the ships.

55 Q. Which way did you alter your helm, which way did you manœuvre?

A. Both ways, port and starboard, in order to avoid the other steamers.

56 Q. Which way did you deviate first?

A. To the right.

57 Q. When you directed your course to the right did you make any signal on your whistle?

A. Yes, I gave one whistle.

58 Q. Do you know how much you directed your course to the right?

A. I cannot say how many points I went to starboard but sufficiently to clear the boat that I wanted to avoid.

59 Q. After you had done that did you steady your helm?

A. Yes.

60 Q. Did you by that means clear the vessels approaching, or some of them?

A. All the time I was troubled with these vessels after the first line there came the second line and third line, until I stopped my engines.

61 Q. Did you pass the first line of that convoy in safety?

A. Yes.

157 62 Q. Did you pass the second line in safety?

A. I do not know, there was great confusion—"ough"—it was awful.

63 Q. You said after passing the first line there was great confusion, is that what you say?

A. Yes.

64 Q. What was the first you saw of the vessel which collided with you the "Lamington," to recognise her?

A. I could not recognise any steamer, I simply saw a steamer that came and collided with me.

65 Q. Supposing that steamer was the "Lamington" what was the first light you saw on that steamer?

A. A green light.

66 Q. Where did that green light bear from you when you first saw it, in what direction, which bow was it on?

A. On my port side about 150 metres.

67 Q. How much on the port bow from right ahead?

A. About three points on my port bow.

68 Q. You saw her green light?

A. Yes.

69 Q. About how far off do you think?

A. About 150 metres.

70 Q. At the time you saw that green light were your engines working?

A. No, stopped.



71 Q. How long had they been stopped before you saw a green light?

A. About three minutes.

72 Q. Was your vessel going through the water at all do you think?

A. Very little.

73 Q. How much do you think?

A. About two miles or knots.

74 Q. When you saw the green light you have spoken of did you do anything with your engines?

A. I went astern in order to minimise the collision which I saw was inevitable.

75 Q. Did you give any signal when you went astern with your whistle?

A. Yes, I gave three blasts.

76 Q. Did you do anything with the helm or rudder?

A. The helm hard-a-starboard.

77 Q. With a view to throwing you bow to port?

A. Yes.

78 Q. At this time were there any other vessels interfering with you, at the time you went full speed astern and hard-a-starboard?

A. I had a big steamer right ahead of me belonging to my convoy, containing explosives, which if I had gone on ahead I should have run into.

79 Q. Where was that steamer from you at the time you saw this green light, about ahead of you I understand you to say?

A. Ahead.

80 Q. How was she lying with regard to you?

A. Almost across my bow.

81 Q. Did she appear to be moving or lying still in that position?

A. I do not remember very well, but I believe she was also stationary.

82 Q. As you said, you starboarded your helm and went full speed astern on your engines. What did the other vessel do, the vessel showing the green light, how did she strike you?

A. She continued ahead at full speed. I reckoned she was going about 6 knots.

83 Q. How did she strike you?

A. Almost at right angles, by my No. 3 hold.

84 Q. In the No. 3 hold; is that on the other side of the engines?

A. Between No. 2 and No. 3.

85 Q. Will you put the model in position about as they were?

(The witness marked the position on a piece of paper marked Exhibit A.)

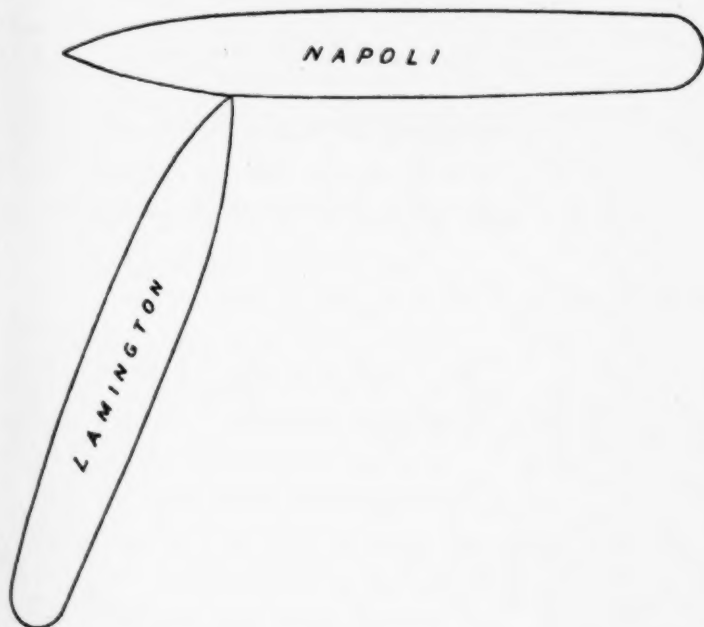
(Here follows diagram marked page 158.)



sgt) R. Jackson  
Examiner

Sketch A

The 'Lamington'





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86 Q. At the actual time she struck the blow, how fast was the other vessel going?

A. She must have been coming full speed because had she slackened her speed or gone astern she would not have sunk us.

159 87 Q. What speed had you at the moment of collision?

A. I was stopped.

88 Q. Did you make any way through the water?

A. A little.

89 Q. How much do you think?

A. At the moment of the collision?

90 Q. Yes?

A. One mile, or more.

91 Q. How long did your vessel remain afloat?

A. One hour.

92 Q. What is the ordinary full speed of your vessel, what can your vessel do?

A. Loaded, about 12 knots.

93 Q. At the time of this accident the convoy was not zig-zagging; you were going straight?

A. No, the warships were zig-zagging.

94 Q. Were they all round the convoy?

A. Yes, all round.

95 Q. Can you give the latitude and longitude where the collision occurred?

A. Latitude N.  $43^{\circ}$ , and longitude  $7^{\circ} 58'$  E.

Mr. Stephens: We say  $43^{\circ} 8'$  N., and  $7^{\circ} 46'$  E.

Mr. Lewis Noad:

96 —. Do you think the other vessels could have seen your green light?

A. No, certainly not; impossible.

97 Q. I think your vessel had twin screws?

A. Yes, the "Napoli."

98 Q. I think you are at present in command of a ship called the "Dumamare"?

A. Yes.

99 Q. Have you got to rejoin her at once?

A. Yes.

100 Q. You have come from Genoa now to give this evidence; have you?

A. Yes.

101 Q. You are going back at once?

A. To-morrow.

Cross-examined by Mr. Stephens:

102 Q. You will not forget that night, will you?

A. No.

103 Q. I will congratulate you on being here. Can you tell me, do you know any other of the ships in your convoy?



A. I remember a Swedish boat that went down.

104 Q. The "Otto Svrerdrup"?

A. Yes.

105 Q. Where was she from you?

A. She was behind me.

106 Q. Immediately behind you?

A. I cannot say, she was astern of my steamer.

107 Q. In a line astern of you?

A. Yes.

108 Q. Was there another vessel called the "Hielfjord," also in the convoy?

A. I do not know, I do not know the names, they blot out the names and numbers.

109 Q. You do know you had several collisions; several ships of the other convoy collided with ships of your convoy?

A. There must have been six or seven.

110 Q. Unfortunately the Swedish ship and the "Napoli" went to the bottom?

A. The Swedish boat was towed to Savona; the "Napoli" went down.

111 Q. Was the "Napoli" the only one that went under?

A. Yes.

112 Q. You cannot tell me the position of any of the other ships in your convoy?

A. The position was more or less the same in the convoy.

113 Q. You cannot give the name of any other ship?

A. No, they had no names.

114 Q. Can you tell me was it a Norwegian or a Swedish ship you had on your port side, or an English ship, do you know the nationality?

A. There was an English steamer, the explosive boat.

115 Q. Was she on your port side?

A. No, on my starboard side.

116 Q. And on your port side?

A. There was another English steamer on my port side.

117 Q. Next to you?

A. 200 metres distant.

160 118 Q. That is the next ship on your port side?

A. Yes.

119 Q. Was there a Norwegian ship in the first line?

A. I do not know.

120 Q. The night was hazy and dark?

A. Hazy and dark.

121 Q. On a hazy and dark night you cannot see half a mile can you; you could not see looms half a mile, could you?

A. Oh, yes, further.

122 Q. However, that is your estimate of the distance?

A. About 1,000 metres, about half a mile.

123 Q. I am suggesting half a mile on a hazy night is a very long way to see looms?

A. Well we saw it.



124 Q. Can you tell me what you were steering by compass?

A. N. 55 E.

125 Q. By compass?

A. Yes.

126 Q. Do you mean that your compass was correct magnetic?

A. Exactly, all compasses are correct.

127 Q. All Italian compasses?

A. There are the variations.

128 Q. You do not understand. Was the helmsman steering a compass course?

A. He was steering N. 55 E., the helmsman.

129 Q. Do you know or not whether your compass on that course was correct magnetic?

A. It was correct.

130 Q. Do you know that?

A. We used to make the corrections to it; the correct course was N. 55 E.

131 Q. I want to get something definite about this. In Italian ships generally you work on true courses, do not you?

A. I do not know.

132 Q. All your logs were lost, were they?

A. No, they are in Genoa.

133 Q. Your log books you know, the log book, and the engineer's log book?

A. The engineer's log book, and all—the deck log book.

134 Q. You saved them?

A. No, only the deck log book, the engineer's log book was lost.

135 Q. I have not had an opportunity of seeing the deck log book?

Mr. Lewis Noad: We must make enquiries about that.

Mr. Stephens:

136 —. What happened was that you suddenly saw a large number of vessels in front of you spreading across your bows ahead, and across on each side of you?

A. No, just in the centre roughly.

137 Q. The other convoy was roughly about two miles across from ship to ship; you could not see that ahead?

A. I do not know.

138 Q. How many ships did you see the loom of?

A. I quite agree with you; but I saw about seven, eight, or ten ahead of me.

139 Q. You cannot see seven ships in a line of a convoy ahead of you at 1,000 metres; you may have had one ahead of you, but if they were keeping stations you must have had some on your bow?

A. I cannot say whether it was five, six, seven, or even ten; all I can say is I saw several steamers ahead of me; I could even see their smoke.

140 Q. Ahead I mean, not in front?

A. Before me, not right ahead.



141 Q. The two convoys were meeting?

A. Yes.

142 Q. When you sighted the convoy the question was how many collisions are there going to be?

A. Yes, that is quite true.

143 Q. When you sighted the looms you switched on your side lights, did not you?

A. They were lit up by us and by them practically at the same time, simultaneously.

144 Q. But the masthead light you did not put up, did you?

A. Yes, and the side lights.

145 Q. Had not you instructions not to show lights?

A. We had instructions not to show lights.

161 146 Q. Were not the instructions only to have your side lights ready, and show them in case of emergency?

A. Yes.

147 Q. Were you using oil lights?

A. No, electric lights.

148 Q. The other convoy switched on their side lights, did not they?

A. They lit all their lights; they lit their red, their green, and white.

149 Q. Are not you mistaken about the masthead lights; I am reading from the document said to be the "Napoli's" story; I do not see anything about masthead lights?

A. If it is not down there probably we forgot to mention it.

150 Q. The first thing you did, was it not, was to port your helm?

A. At first, a long time before the collision, in order to avoid the other ships that were passing.

151 Q. That was in order to avoid certain ships whose red lights you saw?

A. Yes.

152 Q. Did you see them on your starboard bow?

A. On my starboard bow; some passed on the starboard bow, some on the port bow.

153 Q. Did you blow a short blast?

A. Yes, to indicate that I was porting my helm.

154 Q. Was there a lot of blowing?

A. A terrible confusion of whistles.

155 Q. You cannot tell how many points you altered, but you altered under your port helm?

A. Very few.

156 Q. You said: I cannot say how many points I went to starboard?

A. It was impossible to calculate, because I kept swinging about to avoid the ships (indicating).

157 Q. You made an indication of zig-zagging, doing what they call the serpentine movement?

A. It might be called the serpentine it is possible by using the two engines one astern and one ahead.



158 Q. You mean to indicate by that you ported, then starboarded, then ported?

A. Yes, to avoid the other steamers.

159 Q. I gather you to say that, but I do not find it again in the account. All there is here is port, and then hard-a-port. You did not steady your helm, did you?

A. No, we stopped then, we found we could not get further ahead.

160 Q. Let us deal with the helm first. You did not steady your helm, did you?

A. Naturally, but it is such a long time ago I do not remember; there were so many manœuvres I do not remember what was done.

161 Q. Then manœuvring you see the green lights of the "Lamington," the vessel that collided with you?

A. Yes.

162 Q. When you saw the green light did you hard-a-port?

A. We stopped and we went hard astern in order to minimise the effect of the collision that was inevitable.

163 Q. When I am talking about the helm, do not talk about your engines?

A. I went to starboard in the Italian to port, in order to avoid the "Lamington."

164 Q. That is hard-a-port; you know what hard-a-port is in English?

A. Left.

165 Q. What do you say? Did you hard-a-port your helm when you saw the "Lamington"?

A. I was stationary; I blew a short blast, I put my helm to hard-a-port, and my engines astern.

166 Q. What you did to your engines as I understand, is this, that it was after clearing some vessels of the convoy you stopped?

A. Yes.

167 Q. That was the first thing that you did to your engines?

A. Yes, then the "Lamington" ported.

168 Q. Directly after you stopped your engines you saw the "Lamington"?

A. Yes.

169 Q. Then it was after you saw the "Lamington" that you put your helm hard-a-port, and your engines full speed astern?

A. I put my helm hard-a-port, and went full speed astern.

170 Q. That is your story as it is here. Very shortly afterwards the collision happened?

A. Almost simultaneously.

171 Q. So that at the time of the collision you had not really time to do anything to take any weight off your ship—a loaded ship?

A. She was going very slowly, she was practically stopped.

172 Q. I suggest that there was not time to do that with the "Napoli," and that she was still going fast?

A. No, she was not going more than a knot.

173 Q. You told us you saw the "Lamington" 3 points on your port bow?



A. Yes, about 150 meters.

174 Q. That was the first you saw of her?

A. Yes, a green light.

175 Q. Had she been shut out by another vessel just before?

A. There were certain other steamers; I cannot say that she was hidden. I suddenly observed her green light.

176 Q. Unless she was hidden on a night that you could see a loom half a mile, why did not you see the "Lamington" till she was 150 meters away?

A. She might have been hidden by some other boat.

177 Q. This one thing is quite clear, that you did not see the "Lamington" until after you had ported your helm?

A. After I saw the green light I ported my helm, and I could not go ahead because there was a steamer there.

178 Q. If you altered more than 3 points under your port helm your green light would be open to a vessel that you saw 3 points on your port bow, would not it?

A. All I can tell you is that she could not possibly have seen my green light; she was coming in a direction from which it would have been impossible for her to have seen my green light.

179 Q. Did you see her first on your port beam?

A. No.

180 Q. I am looking at another part of your story, paragraph 9. Do you know anything about how you were heading when you saw the "Lamington"?

A. I cannot remember, it was almost the same as the original heading. I may have changed about 30 degrees to the right.

181 Q. You did not blow three blasts, did you, when your engine was put astern?

A. Yes, to show that I was going astern.

182 Q. That is another mistake; it is not in the statement?

A. I must have forgotten.

183 Q. Did you hear any signals from the "Lamington" that you could distinguish?

A. No.

184 Q. You heard a lot of signals in confusion?

A. Yes, I heard a whole lot of confused ones from the beginning all the time.

185 Q. From the time you saw the "Lamington" you heard no signals from her?

A. No, true I did not hear any.

186 Q. She says she blew two, and then three, so that she must have blown the three before you saw her?

A. No, and besides the distance between us was so very short that she would not have time to do anything.

187 Q. Then the real truth is that this was as you describe it, a terrible experience; that is your word?

A. Yes; we are sailors and we understand it.

188 Q. Your convoy ships doing their best there were a large number of collisions?

A. Yes, no doubt.



Mr. Stephens: I think the angle the witness puts seems to be about 80 degrees, so I have not challenged it.

Re-examined by Mr. Lewis Noad:

189 Q. I want to understand one thing, when you saw the green light of the "Lamington" and went astern, did you put your helm so as to bring the bow of your vessel to the left, or to the right?

A. To make my bow go round to the starboard, and bring my stern round to port.

164 190 Q. When you saw the green light of that vessel, did you want to cant your bow to starboard or to port?

A. I wanted to cant my bow to starboard so as to have a possible change of the "Lamington" passing that way.

191 Q. The "Lamington" crossing ahead?

A. Yes. Had I been able to swing round 30 meters she would have cleared my bows.

192 Q. You wanted to cant your bow to starboard?

A. Yes.

193 Q. And you put your helm that way which you thought was best to do that?

A. Yes.

194 Q. There was an inquiry about this collision in Italy, was there, before a naval court?

A. There was.

Mr. Stephens: I do not know how that arises, or how it is evidence in a collision case.

195 Q. Mr. Lewis Noad: And on that inquiry were you exonerated from blame?

Mr. Stephens: I object.

The Witness: Yes, and I was praised for having manœuvred as I did manœuvre.

PASQUALE LANDI, sworn.

Examined by Mr. Lewis Noad:

196 Q. Were you second officer of the "Napoli" at the time of this collision?

A. Yes.

197 Q. Was it your watch on deck at the time?

A. I was not on the watch.

198 Q. Were you on deck, or what part of your vessel were you on at the time?

A. On the port side, the promenade deck.

199 Q. What was the first you saw of the other vessel?

A. I saw the loom, the ship.

200 Q. The hull you mean; did you see any lights?

A. No, I did not see any lights.

201 Q. At that time had you heard any signal from your vessel?



A. Yes, I heard one whistle.

202 Q. Was that a short blast?

A. One short whistle.

203 Q. How long was it after that whistle that you first saw the vessel that collided with you?

A. Before I heard the whistle I saw the "Lamington."

204 Q. When you first saw her where was she from you?

A. On the port side.

205 Q. How bearing, how much from being right ahead?

(The witness marked the position with the models on a piece of paper which was marked Exhibit B.)

(Here follows diagram marked page 163.)



163

Sketch "B"

(sgt) R. L. Jackson  
Examiner

The Lamington

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206 Q. Was that the way she was coming?

A. That is the time I saw her first.

207 Q. How far off was she?

A. I do not remember very well.

208 Q. Did you at any time see any light on the other vessel, the "Lamington"?

A. No, I did not.

209 Q. Did you see the other vessel strike you?

A. Yes.

210 Q. What sort of speed was she coming?

A. I think about five or six miles.

211 Q. She struck you on the port side?

A. Yes.

212 Q. What sort of speed had your vessel on at the time of the collision?

A. About two miles, not more, I cannot be sure; about two miles, she was going slowly.

213 Q. How far did this other vessel cut into your vessel, how far did she go into you?

A. I know the place, but I cannot say how much.

214 Q. You cannot say how deep she went in?

A. I cannot say how much.

165 215 Q. How long did your vessel remain afloat after the collision?

A. About an hour, more than an hour; I am not sure, but more than one hour.

Cross-examined by Mr. Stephens:

216 Q. Was it daylight when you left her, or practically daylight when you left her?

A. When we left the "Napoli" was it morning?

217 Q. Yes?

A. No, night.

218 Q. The collision occurred at midnight?

A. Yes, just midnight.

219 Q. This was in July?

A. From the 4th to the 5th of July.

220 Q. Was it breaking day when you left her?

A. No, it was about one or half past one in the morning; it was night time. I know it was about 1.30—I do not remember the hour, but I think about one and a half hours after midnight.

221 Q. You were not on watch were you when the collision happened?

A. No, I was not.

222 Q. Where were you?

A. I was on the promenade deck.

223 Q. Were you coming on watch?

A. Yes, I was ready to come on watch at 12 o'clock to 4 o'clock.

224 Q. You had just come out to go on watch?



A. Yes, I came outside my cabin, and I was ready to be on watch.

225 Q. Then there was a lot of whistling; did you hear a lot of whistling?

A. No, I do not remember.

226 Q. All the ships in the convoy, a regular concertina sound?

A. I do not remember; I looked to a ship there and to a ship there (indicating).

227 Q. When you came out was it a case of one ship there, and one ship there?

A. When I came out one was alongside.

228 Q. When you came out were the two convoys intermixed?

A. Yes.

229 Q. There was one ship there, and one there, and another ship everywhere?

A. Yes.

230 Q. Ships all around you?

A. Yes.

231 Q. Colliding, six or seven colliding with each other?

A. I do not know; I know one was on this side.

232 Q. One on your starboard side?

A. Yes.

233 Q. What was that, a Swede?

A. That I do not know; it was night time, and we could not see the names.

234 Q. You never saw any light on the "Lamington"?

A. No.

235 Q. Your idea of the speed of the two vessels at the time of the collision, as you very fairly said, was an estimate, you cannot tell?

A. The "Napoli" was about I think two miles, but I am not sure, it was slowly.

236 Q. What I suggest is this that you had no time to think about speeds of ships; you would think about saying your prayers?

A. I saw the other steamer on my left; I did not see the speed, I know it was slow on the "Napoli."

I certify the foregoing to be a true and accurate transcript of my shorthand notes.

(Sgd.)

EDWIN RUDGE PEARCE,

*Member of the Institute of Shorthand Writers.*

This is the transcript of the shorthand writer's notes of the Evidence given before me in this case on the 25th day of January, 1921.

(Sgd.)

R. S. JACKSON,

*Examiner.*



166

Fo. 127. 1919.—C.—No. 376.

In the High Court of Justice.

Probate, Divorce, & Admiralty Division.

(Admiralty.)

Fos. 98.

Writ Issued the 22nd Day of February, 1919.

COTONIFICI RIUNITI DI SALERNO and Another

v.

THE OWNERS OF THE STEAMSHIP "LAMINGTON."

The "Lamington."

*Evidence of Gerolamo Bologna, Master of S. S. "Napoli," and Pasquale Landi, Second Officer of S. S. "Napoli," Two Witnesses for the Plaintiffs.*

Parker, Garrett & Co., St. Michael's Rectory, Cornhill, E. C. 3,  
Plaintiffs' Solicitors.

167

No. 17.

United States District Court, Southern District of New York.

QUEEN INSURANCE COMPANY OF AMERICA, Libellant,

against

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent.

*Deposition Taken on Behalf of the Libellant at the Office of Messrs. Harrington, Bigham & Englar, No. 64 Wall Street, New York City, January 6, 1921.*

Appearances:

Messrs. Harrington, Bigham & Englar (Mr. Houston) for the Libellant;

Messrs. Burlingham, Veeder, Masten & Fearey (Mr. Burlingham and Mr. Veeder) for the Respondent.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.



- 168 WILLIAM C. ASSERSON, being duly sworn and examined as a witness for the libellant, testified as follows:

By Mr. Houston:

- Q. What is your rank in the United States Navy?  
A. Captain in the United States Navy.  
Q. Where are you stationed at present?  
A. Hydrographic Office, Navy Department, Washington, D. C.  
Q. Were you in command of the U. S. S. Castine, in July, 1918?  
A. I was.  
Q. How long before the 4th of July, 1918, had you been in command of the Castine?  
A. Since February 1, 1917.  
Q. Had the Castine been engaged guarding convoys in the Mediterranean prior to the voyage on which the Napoli was lost?  
A. Yes.  
Q. For about how long?  
A. Since the early part of August, 1917.  
Q. About how many trips with convoys did you make in the Mediterranean?  
A. On an average of about four a month after sometime in November, 1917, excepting one month in which the Castine was under repairs.  
Q. How many convoys did you accompany between Gibraltar and Genoa?  
A. I should say about four.  
Q. Do you recall the convoy in which the Napoli was at the time she was sunk?  
A. I do.  
Q. Where did that convoy sail from?  
169 A. From Gibraltar, on the 30th of June, 1918, leaving Gibraltar at 10 o'clock in the morning.  
Q. What were the warships guarding that convoy?  
A. H. M. S. Jeannette II, commanded by Captain Ryan, R. N. R.; H. M. trawler Algol; and Italian auxiliary Toera, having on board the Comodore of the convoy whose name was Aymerich Ignasio, Commander, Royal Italian Navy; and the U. S. S. Castine, commanded by me.  
Q. Who was the ranking officer of the convoy?  
A. Captain Ryan, R. N. R.  
Q. He was the British Officer?  
A. Yes.

By Mr. Veeder:

- Q. You mean of the naval vessels, this man was the commander of the convoy?  
A. Yes.



By Mr. Houston:

Q. About how many merchant vessels were there in the convoy?

A. Leaving Gibraltar about twenty, and on the morning of July 4th two or three were detached into Marseilles, France.

Q. Did you receive any sailing orders when the convoy left Gibraltar?

A. Yes.

By Mr. Burlingham:

Q. Were they in writing?

A. Yes.

By Mr. Houston:

Q. From whom did you receive them?

A. To the best of my recollection through Admiral Niblack, commanding the United States patrol forces at Gibraltar, from the Chief of Staff to Admiral Grant, Royal Navy, who was the senior officer at Gibraltar.

Q. Have you those sailing instructions in your possession now?

A. No, I have not.

Q. Where did you leave them, or send them?

A. They were left by me on the Castine when I was relieved in August, 1918, and presumably when the Castine came home and was put out of commission they were sent to the Navy Department—that is the original orders.

Q. In ordinary course where should they be now if they still exist?

A. In the Navy Department in the office of the Chief of Naval Operations.

Q. Do you recall the substance of those instructions?

A. Yes.

Q. Will you tell us, as fully as you recall, what those sailing instructions were?

Mr. Burlingham: I object to the witness, stating the contents of a written document, the document should be produced.

A. The sailing orders, when received by me, were of a secret nature, when they left my possession they were still of a secret nature, and as they are not now in my custody I cannot give the contents of the sailing orders.

Q. Did you make a copy of those orders in your war diary?

A. Yes.

Q. Where is the war diary of the Castine now?

A. It is in the historical section of the office of the Naval Intelligence, Navy Department, Washington, D. C.

Q. Was the copy that you put in that war diary a full and accurate copy of the instructions?

A. Yes.

Q. Do you feel at liberty to tell us, in a general way, what those



orders consisted of without going into the details that you consider improper?

A. Well, there is so much of it that is not secret that everybody knows, that perhaps I can tell some of it.

Mr. Burlingham: I must object to his telling a portion of it, and also I think the war diary should be produced as the best evidence.

Q. Will you tell us in general what those orders consisted of?

Mr. Burlingham: Same objection.

A. They consisted in general of a list of ships in the convoy, and the route that was to be followed by the convoy, I think that is all.

Q. Did the route, as stated in the instructions, give you courses and distances to be followed for the entire trip from Gibraltar to Genoa?

A. Yes.

Q. Did the convoy follow the route so prescribed in the instructions?

A. To the best of my knowledge it did, very closely.

Q. During the voyage did you have before you at all times the sailing instructions and also the course that the convoy was actually following?

A. Yes.

Q. What were your general instructions as to the following of the sailing instructions as to routes in convoys?

Mr. Burlingham: Same objection.

A. The route was, ordinarily, to be followed closely; the senior officer present could, of course, change these for any sufficient reason such as a submarine being reported in the vicinity.

Q. From whom did you receive these instructions that you have just given?

A. They were general instructions issued by the British authorities at Malta.

Q. Were the British in general control of this convoy?

A. Yes.

Q. You sailed from Gibraltar on what date?

A. June 30, 1918.

Q. During the voyage and before the sinking of the Napoli, did you receive any wireless messages relating to the finding of German submarines in the vicinity of your route?

A. Yes, several, which I have here.

Q. Will you give us the messages that you received on that subject?

A. One on June 30th from Gibraltar, 8.55 A. M.—Allo 36° 42' North, 20° 20' East, numbered 2127, that is the time of the day, 21st hour and 27th day; also from Gibraltar—Allo 38° 15' North, 0° and 2' West, dated 0327; again from Gibraltar at 9.40



173 A. M., June 30th, enemy submarines off Algiers; on July 1st a Government war warning was received at 9 P. M., saying—enemy submarines off the Gulf of Lyons; on July 2nd there was no report; on July 3rd there was no report; on July 4th at 6.59 P. M. from the Italian auxiliary, Citti di Bengazi — Allo 43° 25' North, 8° 27' East, dated 1904; that is all the Allos that were received on this ship that would have been of interest to this convoy.

Q. The others were just remote in distance that they couldn't affect you, is that right?

A. Yes.

Q. What is the meaning of the Allo?

A. Means submarine sighted.

Q. Is that a code word regularly used for these messages?

A. Yes.

Q. What was the position of your convoy at 8 P. M., on July 4th?

A. I will have to refresh my memory from that war diary (referring to paper) at 8 P. M., July 4th latitude 42.40 N., longitude 7.48 E.

Q. Have you plotted on this chart the course of your convoy from that position until the collision?

A. Yes, but the first course from N. is only from my recollection, I cannot say whether that is so or not, not having anything here to refresh my memory as to that course.

Q. That is the course that you have marked in a broken line with a question mark on it?

A. Yes.

Q. After the point marked 10.30, up to the point marked collision—those courses are taken from observations made by you at the time and entered in your war diary, are they not?

A. I think they are taken from the official log of the Castine.

174 Q. From the log?

A. From the log.

Q. Have you also plotted for convenience, the course of the west-bound convoy, taking the plotting from the war diary or log of the Yankton?

A. Yes, working it back from the time of collision, from 11.38 P. M. until 8.30 P. M., the times subsequent to that are incomplete in the war diary of the Yankton, or rather changes of course are mentioned without telling what the courses are.

Mr. Houston: I offer this chart with the plotting in evidence. It is marked Libellant's Exhibit 1.

Q. What were the weather conditions on the evening of July 4, 1918, in the vicinity of the eastbound convoy?

A. Very little, if any, wind, dark, hazy, sea smooth, no wind.

Q. About how far off could you see a vessel running without lights?



A. I should say not more than half to three quarters of a mile.

Q. Were all the vessels of the convoy operating without lights?

A. Yes.

Q. Was that part of your sailing instructions?

A. No.

Q. Was the sailing without lights prescribed by any authorities?

A. Yes.

Q. By whom?

A. By the British authorities.

Q. Was that a general instruction to convoys, or special for this convoy?

A. A general instruction.

Q. And on the evening of July 4, 1918, were all the lights in the eastbound convoy in fact invisible?

A. Yes.

175 Q. Out?

A. I think so, I have no recollection of seeing any.

Q. What was the position of the Castine with respect to the other vessels of the convoy?

A. She was on the left flank of the convoy, together with the Jeannette II which had a position ahead of the Castine, there were two others over here (indicating).

Q. Two others on the right flank?

A. Two others on the right flank.

Q. How were the merchant vessels of the convoy arranged in the convoy—were they in columns or rows?

A. They were in what is known in the Navy as column of divisions.

Q. Can you explain approximately what that formation is?

A. The leading division is formed in line abreast that is the ships are upon each other's port and starboard sides; the second division is in the same formation behind the abreast division and the third division is in the same formation as the second division.

Q. Was that formation prescribed by the British convoy regulations?

A. Yes.

Q. Was the same formation followed throughout the voyage?

A. Yes.

Q. Will you tell us what you saw of the collision tell us the story of it so much of it as you saw?

A. At about 11.38 P. M., G. M. T. (Greenwich Mean Time) being on the bridge, I saw ahead slightly on the starboard bow a ship not belonging to our convoy; this one ship was the only one I recollect seeing at that time, but immediately afterwards the vessels in the eastbound convoy turned on their navigation lights and began to blow whistles indicating that they were turning to port, which forced the two escorting vessels on the port side to port, to go to port, the Castine continued turning to port as she was forced off by what is supposed to be our convoy still continuing to turn to port, until the Castine was on approxi-



mately apposite course from where she started; it appears that the vessels of the other convoy, of the westbound convoy, had passed through, and some of these were mistaken for vessels of the eastbound convoy having turned completely around.

By Mr. Burlingham:

Q. Mistaken—you mean by you?

A. Yes (continuing) until—to go back a bit—when the Castine had turned to about 90 degrees one crash of collision was heard by me on the Castine, and shortly after that another crash of collision in the convoy was heard by me, the Castine continued to the rear to clear what was now apparently another convoy, and finally avoided this westbound convoy and returned to the Napoli which then seemed to be in a sinking condition down by the head, and the Italian steamer Tocra was standing by removing the personnel.

By Mr. Houston:

Q. Did you see any other vessels damaged at that time?

A. On returning to the Napoli and after inquiry if the Castine could be of any assistance, another ship which turned out to be the Otto Sverdrup was seen about probably a mile away lying dead in the water; the Castine went to her assistance. In the meantime the moon had arisen, we could see farther.

By Mr. Veeder:

Q. This was a couple of hours later?

A. Yes.

By Mr. Houston:

Q. Did you hear the crash of any other collision than the one?

A. Two is all I remember hearing.

Q. Just before the collision, how many of the vessels of your own convoy did you see at that time, if any?

A. I have no recollection of having counted them.

Q. Were the weather conditions such that you could see more than the convoy vessel immediately next to you?

A. Yes, one could probably see to about the middle of the column but not the vessels on the other flank.

Q. What course was the convoy steering, just before the collision?

A. N. 45° E. true.

Q. Had you received any information before the collision about the coming of Italian destroyers?

A. Yes, sometime in the afternoon of July 4th, the Italian commodore on board the Napoli had signalled to the ships in the convoy that an additional escort of Italian destroyers would probably be met with about midnight.

Q. Did he say from what direction those destroyers were coming?



178 A. I do not remember, but it is evident they would be coming from Genoa, it was so understood.

Q. And that information was given out generally to the vessels in the convoy?

A. Yes.

Q. Who was the commodore of the convoy?

A. Ignasio.

Q. What vessel was the commodore of the convoy on?

A. On the Napoli.

Q. Was he a naval officer?

A. Italian naval officer.

Q. Was the British officer in command of the Jeannette II senior to the commodore of the convoy?

A. Yes.

Q. Under the practice in these convoys who would have the decision as to the courses to be followed by the convoy at all times?

A. The senior officer present, whether he was there as the commodore of the convoy, or as the senior officer of the escort.

Q. And in this particular case then, the command of the entire convoy, merchant as well as naval vessels, would be the commander of the Jeanette II?

A. Yes.

Q. In your opinion, assuming that the commander of the Napoli first observed the loom of the westbound convoy at a distance of about 3,000 feet, what course should he have pursued as a careful navigating officer?

Mr. Burlingham: I object to that question.

A. That I think comes under that clause in the Rules of the Road, where when collision is imminent—I don't know the exact wording of it—when collision is imminent, that all steps should be taken to avoid collision.

179 Q. How fast was your convoy proceeding immediately before the collision?

A. About 8 knots.

Cross-examination.

By Mr. Burlingham:

Q. Did you join the convoy as one of the escorts at Gibraltar?

A. The convoy was formed up at Gibraltar, the escorts and the ships I have mentioned.

Q. The Castine was the American boat?

A. Yes.

Q. And one English boat?

A. Two.

Q. They were on the right flank?

A. One Englishman and myself were on the left, and one Italian and an Englishman on the right.

Q. What was the Englishman on the same side with you?

A. The Jeannette II.



Q. Was she astern of you?

A. Ahead.

Q. What division were you abreast of, as you say, on the 4th of July evening?

A. Abreast the second division approximately, our situation was zigzagging back and forth.

Mr. Houston: I ask that this sketch of the courses of the vessels be marked for identification.

It is marked Libellant's Exhibit 2 for identification.

Q. What space was there between the starboard side and the port side of the merchant ship abreast of you?

A. From 400 to 700 yards.

180 Q. What was the space between each of the ships in the convoy?

A. About 500 yards.

Q. What was the distance between one division and the other?

A. About 600 to 800 yards.

Q. And there were six in each division, in the first two divisions of this convoy?

A. As far as I recollect that is approximately correct.

Q. And as you recollect, three divisions?

A. Yes, I am sure there were three divisions, how many ships there were in each line—they were changed, you, three ships left on the morning of the 4th, but whether they came from this column or this one (indicating), I don't remember.

Q. And the Napoli was the commodore's ship, was it?

A. The Napoli was the commodore's ship, she was in the center of the first division.

Q. Was it from the Napoli that signals were given for changes of course?

A. No, I think not, I think it was from the Jeannette II.

Q. I understood that you said notice came from the Napoli by signal, that Italian destroyers were expected, isn't that so?

A. Yes.

Q. By what method was that signal?

A. Flags, semaphore.

Q. And if signals were to be given from the Napoli at night, how were they given?

A. In various ways.

Q. Morse signals?

A. By wireless or by whistle or by blinker signal.

Q. I don't exactly understand, captain, the relative authority of the commodore on the Napoli and the English officer on the Jeannette—will you kindly explain?

181 A. The function of the commodore was to keep the convoy together more or less.

Q. In proper formation?

A. In proper formation, calling the attention of ships to it if they were out of position, and other matters concerning the conduct of the convoy.



Q. Matters then of immediate navigation, like porting and star-boarding would be given from the Napoli, but the general direction of the convoy would be given from the Jeannette II?

A. Yes.

Q. Is it not the fact that this convoy was about quite a number of hours ahead of its time?

A. Yes.

Q. What was that due to, overspeed or currents or what?

A. Due principally I think, to the overspeed on account of the fine weather that this convoy had had since leaving Gibraltar.

Q. Were they zigzagging during the 4th of July?

A. I think so.

Q. Did they use, do you know, clocks, zigzag clocks—I don't know what you call them, those clocks which you set?

A. Those ships that had them on board probably used them, but that was a matter of the commodore's to make changes of course for the zigzag being followed at the stated times, when all ships would change together.

Q. That is you refer to the commodore on the Napoli?

A. Yes.

Q. At times the convoy was able to go along without zigzagging, and at times orders were given to zigzag, is it not so?

A. The general instructions were to zigzag all convoys at that time.

182 Q. That is, on account of favorable news as to the absence of submarines, or the lack of news that they were present, they would run for a good many miles without zigzagging, and then orders would be given to zigzag again, is that so, was that your experience?

A. Sometimes, but very infrequently.

Q. Who would determine that, the commodore on the guide ship?

A. No, whether to zigzag or not was a matter for the senior officer present to determine.

Q. But the orders as to zigzagging were very definitely given at the place where the convoy was made up, or at the station where orders were brought to the commanding officer, is it not so?

A. My recollection is that in nearly all sailing orders received, zigzagging was to be done.

Q. And the time was fixed, and the number of degrees to starboard or port was stated in those orders?

A. Oh, no, that was a matter under the commodore's jurisdiction.

Q. If it were desired to accelerate the speed, run it up to  $8\frac{1}{2}$  knots, or to retard the speed to say 7 knots, did the commodore give that order?

A. No the senior officer present would give that order. I may say there was a sort of conflict of authority between the commodore and the senior officer of the escort at times—two cantankerous people got together, you know.

Q. But usually the commodore determined mere matters of navigation?



A. Yes.

Q. From your position on the Castine that night, could you see the Napoli, make her out, the loom of the ship?

183 A. I can't answer that, I have no recollection of looking for her particularly.

Q. I understood you to say that you couldn't see the boats on the right flank but that you could see more than one boat from your side, and I want to know whether you could see two or three or four, that is what I am getting at?

A. My recollection is that we could see perhaps the first three columns next to the Castine, that would include the Napoli, whether I saw the Napoli or not I couldn't say.

Q. I had supposed, captain, that the speed would be fixed by the original instructions and would be adhered to as closely as possible. It seems to me that in a four day's trip, a gain of 24 hours shows a very marked departure from instructions, does it not?

A. It appears so.

Q. Whose fault was that?

A. That was a matter that would rest ordinarily with the senior officer of the escort in following the instructions that were given to him from the routing office, I would say it was in his power to stop or go ahead.

Q. All you mean by that is, that his was the ultimate responsibility if he departed from instructions?

A. His was the responsibility.

Q. What time did the first collision occur, at what hour and minute did you hear it, hear the crash?

A. As far as I remember, about 11.40 P. M., G. M. T. on the 4th day of July.

Q. Did you make any record of the time of the first crash?

A. Not to my recollection.

184 Q. And the second crash—how long after the first did that follow?

A. I should judge about two or three minutes.

Q. Was there a third crash that you heard?

A. I heard no third crash.

Q. Had you any knowledge as to what ships were in collision when you heard the first crash?

A. No.

Q. Do I understand you to say that you didn't go to the Napoli until an hour afterwards?

A. Yes.

Q. Where were you during that time?

A. I was being chased to the southward by this other convoy, the other convoy had gotten through.

Q. What do you mean by that, why were you chased?

A. I mean to get around them trying to avoid them and go around them, I was crowded off to the southward and westward.

Q. Let me see about your navigation—the first you saw was the loom of a vessel about how far away, and on what hand?

A. I said approximately ahead, a little on the starboard bow.



- Q. How many points on the starboard bow?  
 A. Less than a point.  
 Q. How far away would you judge—thru quarters of a mile?  
 A. A half to three quarters of a mile.  
 Q. You were at that time making 8 knots, you think, were you?  
 A. Well I was making more than that myself, I was zigzagging.  
 Q. And your prevailing course, your base course was N. E. true?  
 A. N. E. true.  
 Q. N. 45° E.?  
 A. Yes.  
 Q. And when you saw this boat, did you flash on your lights?  
 A. No.  
 Q. Did she?  
 A. No.  
 185 Q. Did you alter your helm?  
 A. No.  
 Q. What did you do?  
 A. I kept my course.  
 Q. What exact course were you on at the time, were you on your base course at the time?  
 A. It is impossible to tell, the ship was constantly zigzagging off the flank of the convoy.  
 Q. You thought that boat was one of the Italian destroyers?  
 A. That was my impression at the time.  
 Q. Which you had been informed in the afternoon was coming?  
 A. Yes.  
 Q. And then you saw a second boat loom up, did you?  
 A. If my recollection is right, I think so.  
 Q. Or several?  
 A. May have been one or several, but I think I only saw one, and possibly two.  
 Q. Were they both on your starboard hand?  
 A. They were both on my starboard hand.  
 Q. Why didn't you starboard your helm?  
 A. Because at that time, as I say, I was under the impression it was the Italian destroyer, and it was not until the vessels in the convoy began turning on their navigation lights and blowing their whistles showing that they were turning to port, that I turned on my navigation lights.  
 Q. Then do I understand that they turned under a starboard helm to their own port?  
 A. Some of them, yes.  
 Q. From this diagram (Libellant's Exhibit 2, for identification), it would seem that they headed over to starboard under a port helm—but you say some of them turned to the northward?  
 A. Yes.  
 186 Q. Under a starboard helm?  
 A. Yes.  
 Q. Which particular ones did you observe do that, those on the left flank?  
 A. Those on the left flank, yes.

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Q. Could you see what the others did?

A. No, but this mass of ships in convoy, whistles were blowing constantly, so it was impossible to tell whether one or two whistles was being blown.

Q. I may have misunderstood you, but I thought you said that they blew signals which indicated which course they were taking?

A. Yes, some of them I recognized as one whistle.

Q. That means, directing their course to starboard, does it not?

A. Yes.

Q. And if you heard one whistle it meant that those boats were heading off to starboard?

A. Heading off to starboard.

Q. Did you hear any two blast signals that you are sure of?

A. I am not sure, no.

Q. Did you blow any signal?

A. I do not recollect.

Q. Ultimately you changed your course radically?

A. Yes.

Q. And under a starboard helm?

A. Under a starboard helm.

Q. Swung around to the northward 90 degrees until you headed N. W. instead of N. E.?

A. Yes, and eventually S. W.

Q. And ultimately came around to S. W.?

A. Approximately.

Q. Did you see any boats on your port hand at any time, or were they always on your starboard hand?

187 A. They were usually on my starboard hand, forcing me around, the prevailing lights that I saw were red.

Q. Did the approaching westbound convoy flash on her lights too?

A. Yes.

Q. And several of their boats flashed lights?

A. Yes.

Q. And the eastbound convoy did the same?

A. Yes.

Q. Then it was easy enough to see some of the boats, was it not?

A. Yes, easy enough to see their lights.

Q. Did the lights light up any of the other boats, they were just side lights, I suppose?

A. Side lights, perhaps a masthead light too.

Q. Which convoy seemed to flash her lights first, the east or west-bound?

A. As far as I could see, the eastbound.

Q. Was that before you changed your course at all?

A. Yes.

Q. Did it occur almost as soon as you saw the loom of this vessel half to three quarters of a mile away?

A. Very shortly afterwards, yes.

Q. Did the flashing on of the lights of the westbound convoy follow almost instantly the eastbound?



A. As far as I can tell, nearly all the ships flashed on their navigation lights approximately at the same time.

Q. They were electric lights, weren't they, bright lights?

A. Yes.

Q. You speak of general instructions not to exhibit lights—don't you recall that in those instructions there is an exception, substantially this, excepting in case of emergency, something of that sort to avoid collision, or words equivalent to that?

A. Yes.

188 Q. As to these signals, isn't there a general instruction to avoid signalling except in case of necessity?

A. Referring to wireless signals, yes.

Q. But not whistle signals?

A. Not whistle signals.

Q. In fact you have to have whistle signals in order to communicate with each other?

A. Yes.

Q. And these boats are covering, frequently in a convoy, a space of half a mile square, aren't they?

A. Yes, more than that, I would say.

Q. So it is absolutely essential to have some means of communication by signal?

A. Yes.

Q. Of course you don't know of your own knowledge anything of the westbound convoy's course?

A. No.

Q. You plotted out something on this chart, I think from their—

A. Taken from the Yankton's war diary.

Q. And did you start with her noon position or what position?

A. No, I started with the time of collision.

Q. And went backwards?

A. And went backwards.

Q. Assuming that she had steered according to her war diary?

A. According to her war diary, from 8.30 until 11.38.

Q. Where did you get the data for this indicated change of course of the eastbound convoy at 10.30, from 10.30 to 11, did you get that from your own diary?

A. From the Castine's log.

Q. In the statements before the Italian Commission of Inquiry, it appears that the collision occurred at midnight, between the 4th and 5th of July, but it fails to state whether that is G. M. T. or not, what would be the difference between local time and G. M. T. in that position, about 8° East?

A. That would be about half an hour, 15 degrees to an hour.

Q. Did you make these entries yourself in the log, or one of your officers?

A. In the war diary I made them myself, in the log it was done by the officers, by the watch officers and approved by me.

Q. I meant the war diary—because I am struck by this expression—"in a few minutes heard crash of collision"—if it was so short

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a time as two minutes, that is 11.40, after you brought these vessels in sight, it seems to me unlikely that you would have used the expression "in a few minutes," I think you would have said "almost immediately after," or "within a couple of minutes," you know perhaps, what you had in mind at the time; as I direct your attention to this language, don't you think you shortened the time a good deal from the time when you saw these boats until the collision—your best judgment is all I want?

A. To the best of my recollection it was not more than three or four minutes.

Q. Perhaps we can get at it another way—when you heard the crash had you already starboarded your helm?

A. Yes, when I heard the crash I was about heading away from the convoy, I had turned for about 90 degrees, which in the Castine takes about a minute and a half; now I hadn't changed my course immediately when I saw that ship until I heard the ships on my starboard hand blowing and seeing them turning to port, which was perhaps a matter of two minutes since I had sighted the ship ahead.

Q. I remember asking you whether you held your course or altered your course when you saw first one ship and then two ships ahead of you, that you took for destroyers, and you said that you did not at first do it?

A. I held my course for I should say from one and a half to two minutes, something like that.

Q. You have several times spoken of these boats turning to port—but from the signal that they blew I should say that they were all turning to starboard?

A. No, I think not, I am quite sure some of the ships on the port flank—which ones I am unable to say—turned to port, that is the reason why I turned to port.

Q. It would be a natural thing if you had a boat on your starboard hand, as much as a point, to starboard your helm and direct your course to port, would it not?

A. Are you talking of the oncoming convoy?

Q. Yes, it would be a natural thing for you—

A. At that time the oncoming convoy was not taken into consideration by me, as up to that point I thought it was the expected Italian escort.

Q. Which would take care of herself like a pilot boat?

A. Which would take care of herself, and my reason for turning to port was being crowded off by vessels on the left flank of my own convoy, and possibly after that this convoy which I hadn't recognized in the mixup, couldn't tell which was ours, and which was theirs, coming down on top of me, you see as I turned off these ships came down, showed me their red lights, I had red lights all around me, all along the starboard side.

Q. My question wasn't directed to your navigation particularly, I merely stated in general terms that if a vessel sees another on her starboard hand a point distant half a mile or more, it would be a



natural thing for her in ordinary circumstances to blow two whistles and starboard her helm, isn't it so?

A. It depends on what light you would see in ordinary navigation.

Q. These boats on the left flank of the eastbound convoy must have had the boats that you saw on their port hand, but may have had other boats in the westbound convoy on their starboard hand, isn't that so?

A. Yes.

Q. Now, when Mr. Houston asked you as a navigator, experienced man, what you would have done, you in those circumstances seeing at a distance of half a mile or three quarters of a mile the loom of approaching vessels, you merely said that you would take such measures as would avoid a collision, and you didn't go any further, is that all you have to say, can't you give us anything more definite than that?

A. No, I am afraid not in the case in point. These ships being sighted not more than half a mile or so away and coming towards each other at the rate of perhaps 15 miles an hour.

Q. 1,500 feet a minute that is?

A. That is half a mile in a minute, they only had a minute to maneuver in, a ship couldn't get started to turn in that time.

192 Q. And the first thing in such circumstances was to flash on the lights?

A. The first thing was to flash on the lights, and apparently everyone did it. I can't say that every ship in the two convoys flashed on their lights, but there was an immense amount of lights around there, it looked as if every ship had flashed on her lights.

Q. I suppose the next thing was for everybody to stop, especially those in the rear tier?

A. Yes.

Q. And not crowd up on the others?

A. Yes.

Q. You were free of the others, way off the northward, and you were free to do as you pleased, all you had to do was to get out of the way?

A. Yes.

Q. And if orders had been given for all to turn a certain way—

A. It couldn't have been done in that case.

Q. No general orders, it was each ship for itself?

A. At that time.

Q. There were no general orders?

A. No.

Q. It was each ship to do the thing that was at hand?

A. Each ship for herself, do the best she can.

Q. And, of course, you not having seen the thing, whether the Napoli or Lamington or the Sverdrup did the right thing or not in the circumstances—it was a case for quick and prompt and independent navigation—and no man who didn't see it could judge whether they did the right thing or the wrong thing?

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193 Q. And nobody could say whether it could have been avoided or could not have been avoided by prompt action on the part of the navigating officer of either of the colliding boats, is that it?

A. That is exactly it.

No. 18.

*Further Deposition Taken on Behalf of Libellant at the Office of Messrs. Harrington, Bigham & Englar, 64 Wall Street, New York City, April 20, 1921.*

Present: Mr. Houston and Mr. Burlingham.

FRANCIS D. BURNS, being duly sworn and examined as a witness for the libellant testifies as follows:

By Mr. Houston:

Q. What is your present occupation?

A. I am marine superintendent Texas Transport & Terminal Company.

Q. During the year 1918 what was your position?

A. I was lieutenant commander U. S. N. in command of the U. S. S. Yankton.

Q. In what service was the Yankton engaged?

A. Merchant convoys and general patrol service in the Mediterranean.

Q. How long had she been so engaged before July, 1918?

A. About one year.

194 Q. Had you been in command all that time?

A. No.

Q. How long were you in command prior to July?

A. About five months.

Q. Do you recall the convoy that sailed from Genoa on July 4, 1918, for Gibraltar?

A. I do.

Q. What was your rank in that convoy?

A. Senior naval officer in charge of escort.

Q. That convoy sailed from Genoa at what hour?

A. The convoy cleared the harbor before noon on that day.

Q. And you proceeded on your course until a submarine was reported, did you?

A. Well, we proceeded upon the courses given by the commodore in charge of merchant convoy until about 7 p. m.

Q. Will you tell us what happened at about 7 p. m. on the 4th of July?

A. A signal was reported upon one of the merchant ships of the convoy that a submarine was in sight and then observed that one of the vessels had been torpedoed, which was the British ship Merida.

Q. What did you do with your vessel, the Yankton?

A. When the attack was observed from the Yankton we came by



and proceeded to the rear, with the purpose of attacking the submarine or driving her off.

Q. What else happened in connection with that fact?

A. Well, when the attack was made the commodore signalled the convoy to change the course 4 points right then after an interval signalled again to cross 4 points to the left, these signals were observed from the Yankton, when leaving the convoy and after we had proceeded astern to attack the submarine.

195 Q. Were all the courses followed by the convoy prescribed by the commodore of the convoy?

A. They were.

Q. And all his orders were of course followed by the convoy?

A. They were.

Q. Are you able to tell, have you a record of all the orders that were given by the commodore at the time of the submarine attack?

A. No.

Q. So you cannot tell exactly how long the convoy stood on the course 4 points to the right or how long she stood in the other direction or whether there were other changes of course?

A. After the attack was made and we left the convoy, our attention was concentrated upon trying to locate the submarine and what signals were made during our absence we have no record of on the Yankton.

Q. Can you say whether or not as a result of orders given at the time of the attack the convoy departed from the course she had been pursuing?

A. The 4 points right and 4 points left, which signals I know were made, would bring the convoy from the course she made prior to the attack.

Q. Well, after the attack was over was the convoy in fact to the southward of its previous course?

A. That I am unable to say, as the Yankton's log shows no 8 p. m. position but as it was the practice and custom to change course frequently when it was known that a submarine was in the vicinity, I am reasonably sure that the convoy was off the course laid down before the attack.

196 Q. Had the convoy during the afternoon received from the commodore any instruction as to changes of course at night?

A. They did.

Q. Will you tell us what those orders were, giving the letter signals that were received and the translation of them, as far as you can?

A. During the afternoon the commodore signalled that the course would be changed at 8.30 to 247° true, that course would be changed at 10.30 to 261° true and that course would be changed at 1.30 a. m. July 5 to 251° true.

Q. Were those orders carried out?

A. They were.

Q. Will you look at this Libellant's Exhibit 1 which is prepared by Asserson, assuming the place of collision to be as shown, by

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Captain Asserson from the records of the Castine is the course of the Yankton which is laid out there correct from 8.30 p. m. until the collision?

A. It is.

Q. Is the point on this chart Libellant's Exhibit 1 marked time of attack 7 p. m., is that a correct showing of the position where the attack occurred?

A. Yes.

Q. Did you make a report to the court of inquiry at Gibraltar, to the commander of patrol squadrons based on Gibraltar upon your arrival in Gibraltar?

A. Yes.

Q. Is this it?

A. It is.

Mr. Houston: I would like to offer it in evidence.

It is marked Libellant's Exhibit 3.

Q. Does that report correctly state the occurrences of the voyage?

A. It does.

197 Q. You did not see very much of the collision itself, did you, in which the Napoli was sunk?

A. I saw none of it.

Q. Now will you tell us what function was performed by the commodore of the convoy in the way of giving orders, what kind of orders he gave and what his powers were?

A. The commodore of convoy gave directions to the merchant ships of courses to be followed and orders with regard to their position in the convoy and the general direction of the merchant ships of the convoy, meeting situations as they arose in connection with the speed and position-keeping of the ships of the convoy.

Q. And as senior naval officer of the escort, what duties did you perform?

A. Our function was to protect the convoy from attack by patrolling in advance on flanks and in the rear, attacking or driving off submarines in the event of an attack and to give assistance to vessels that were injured by attack.

Q. Were all the courses and speeds followed by the convoy prescribed by the commodore?

A. In so far as the merchant ships were concerned, the speed of the escorts varied as required to perform the functions of protection, that is zigzagging and going ahead or astern as indications of the presence of submarines might appear.

Cross-examination.

By Mr. Burlingham:

198 Q. In the log of the Yankton which Mr. Houston has produced I observe this entry "at 11.40—observed a steady white light on commodore ship, remaining on for about 10 seconds, then blew two blasts on whistle, whereupon the entire first line



turned on navigational lights," that was of course 11.40 p. m., July 4?

A. Yes.

Q. You were then on the escort on the starboard side of the convoy?

A. Yes, sir.

Q. And about abreast of the first line, a little abaft of it?

A. About abeam of us.

Q. About abeam?

A. That was our position.

Q. You were then on a course as I make it 261° true?

A. 261° true.

Q. That is about a point to the southward of due W9°?

A. About that, yes.

Q. About W by S, nearly?

A. Right.

Q. You had been on that course since 10.30?

A. Yes, sir.

Q. No zigzagging then?

A. The escort zigzagged but not the convoy.

Q. Then you mean that 261° true was the course of the convoy, but not necessarily yours?

A. Yes, we made good that course, but zigzagging on either side of it.

Q. Under standing orders?

A. Yes, sir.

Q. For what purpose, why did you zigzag and the convoy not?

A. Why, the attacks were usually from the flanks and the escort zigzagging gave more territory on the side and non-plussed them, I might add that zigzagging did not necessarily mean some distance on each side of the course made good, sometimes we went ahead and sometimes a little bit astern of the position and abeam of the convoy.

Q. You were not zigzagging by exact time, you were on your own so to speak?

A. Following the zigzag.

199 Q. Quite different from moving with the whole convoy, zigzagging, in that case, it isn't essential to follow a fixed schedule of times and points?

A. Quite right.

Q. When you saw that white light on the commodore ship which was the Ansaldo III, was it not?

A. The Ansaldo III, yes.

Q. You thought something was up, did you?

A. Why, it was something that would cause notice but sometimes at night the ships in convoy would show a light for a few seconds, such as opening doors.

Q. But this was a steady white light?

A. For about 10 seconds.

Q. Was that a signal to anybody?

A. No signals at night, it was against orders to do so.



Q. Except in case of emergency?

A. Except in case of emergency.

Q. The same with regard to signals or not?

A. Whistle signals.

Q. Not the same restriction was there?

A. No, when ships changed course at night they would always blow a whistle.

Q. It was really essential to give a certain amount of latitude in the matter of signals by whistle as a guide to other vessels in the convoy?

A. Yes, the vessels changed course to right or left, as the case may be.

Q. It says they then blew two blasts on the whistle, did you mean the Ansaldo?

A. Yes, sir.

Q. That indicated that she was proceeding to the left, I suppose?

A. To the left.

Q. Did that indicate that all others were to do the same?

A. No, it did not because—it happened so quickly, what the other vessels did, that didn't occur to us as an emergency signal to do.

Q. They all flashed on their side lights and navigation lights, did they?

A. Right.

Q. Immediately.

A. Immediately, that is the ships that were visible to us, upon our side.

Q. You could see two or three ships?

A. Two or three, probably a few more, the ships in the first line and some in the second, just how many I do not recall.

Q. I think there were according to the evidence we have already had eight ships in the first line?

A. I don't recall that.

Q. Seven in the second line and three in the third?

A. I don't recall now, yes, that is right, eight, seven and three, I have it here.

Q. How many of these could you see from your position, about?

A. At night, I really don't recall how many.

Q. Could you make out the loom of the Ansaldo, she was the guide ship?

A. We knew it was the Ansaldo probably by the counting from our flag.

Q. She was the fourth ship from you?

A. Yes.

Q. Of course you could see the three between you and her?

A. Yes.

Q. You could make her out?

A. Yes.

Q. Your attention was not directed to any of the others further to the left?

A. No.



Q. And as to the ships in the second tier could you see those which were on the starboard side?

A. We could see some, but how many I do not recall.

201 Q. Two or three?

A. Probably two or three, probably as far as the center of the convoy.

Q. Could you make out any in the third?

A. I don't recall, we probably could.

Q. Was there any other escort astern of you?

A. Yes, the Bengazi, an Italian escort.

Q. An Italian gunboat?

A. Yes, sir.

Q. And another on the port side of the convoy called the——

A. The Achenar, she had been left behind with the Merida, the vessel that had been torpedoed.

Q. She was towing the Merida back to Genoa?

A. Yes.

Q. So that left only two escorts?

A. No, there was an Italian destroyer with us.

Q. Where was she, if you know?

A. She was astern I believe, the Bengazi was upon the port flank as I recall, just a moment, no, the destroyer was astern, the Bengazi was, I believe, on the port flank.

Q. In Libellant's Exhibit 3 I observe you say the Italian escort ship Bengazi on the starboard flank abaft abeam of the second line, that must be correct?

A. Yes.

Q. So the Bengazi was astern of you?

A. That was before the attack of the submarine.

Q. Then in paragraph numbered 3 of your report it says it was observed that the Bengazi had turned left, was heading for a ship that was falling astern, she went off——

A. To attack a submarine which her commanding officer believed he saw.

Q. You don't state in your report the position the Bengazi took after that, what is your recollection?

202 A. Because night had closed in before the Bengazi returned to the convoy, I am unable to state definitely what position she was in after nightfall.

Q. Captain, what was the first you observed of any vessel in the approaching convoy, the eastbound convoy?

A. I did not know that there was an eastbound convoy ship until the next morning I learned that there had been a collision between an oncoming convoy and ours.

Q. Did you continue in the same position right along on the beam of this first line or did you go aft, did the Yankton continue abeam of the first line?

A. You mean after the collision?

Q. From the time that the light of the Ansaldo and the boats first flashed on their lights?

A. Did the Yankton continue?

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Q. In that position?

A. Generally, yes, but we went ahead to try, we maneuvered to try and determine what had taken place.

Q. What I am trying to get at is this, if the eastbound convoy which you did not see as you say, had flashed on lights in the same way that your convoy flashed on his, you would have seen that, would you not?

A. I would not be able to distinguish them from the lights of our own convoy.

Q. Your boats were abeam of you and presumably the eastbound convoy was ahead of you or was on your port hand or port bow probably, now if they had flashed on their lights, would you not have seen them?

A. Not necessarily because this happened so quickly, a large number of lights shown almost simultaneously, as I stated in this report we observed one ship going in the opposite direction which I

203 deduced must have been a ship of the eastbound convoy.

Q. You think so now?

A. Yes, sir, after the collision.

Q. At the time what did you think?

A. Did not know what to think.

Q. Did all your boats apparently swing to the left in accordance with that two blast signal?

A. No, they did not.

Q. Of course that is distinctly what your commodore ship, the Ansaldo meant to do or she would not have blown two blasts, that is the only significance of that signal?

A. Presumably, but there were no indications of the presence of a submarine, there had been no signals before nightfall to change course at that time and the two blasts that we heard would indicate that the Ansaldo was changing course, but immediately after the two blasts were blown this mass of red and green lights was turned on.

Q. It is a long while ago and it is rather hard to be pressing you for definite information but in your position I don't very well see how you could have seen the red lights of your own ships, I should think you could easier see the red lights of the approaching convoy?

A. They were all jumbled together, red and green lights, now necessarily, as was demonstrated afterwards, the red lights belonged on the ships of the eastbound convoy.

Q. And the green lights on yours?

A. Yes, at that time that I speak of when the collision took place we were unaware that a collision had taken place, we heard no sounds and received no signals.

204 Q. Those were exciting times and nothing would surprise one I suppose?

A. Quite right, although the fact that a collision had taken place did not dawn upon me nor upon any of the officers on board.

Q. I think Captain Asserson stated that he heard the terrific crash of collision, you didn't?

A. No, sir, we heard nothing.

Q. You see there were really three collisions that night?



A. Yes, I heard the next morning.

Q. What about this boat that came through, passed through in convoy, did you see her?

A. We saw the lights passing through, the red light.

Q. How near you did she pass?

A. I don't recall now whether between the first and the second or the second and third.

Q. Were there any whistles blown after this two blast signal?

A. None that I recall.

Q. Any of your ships in your convoy stop their engines?

A. That I don't know, I do know that the convoy formation was broken, and that at daylight some of our convoy were well astern and it was necessary to do about 5 knots for some time to permit them to come up, probably less than 5 knots.

Q. Do you know where the Lamington was in the convoy?

A. Not without referring to the diagram.

Q. Of course if the ships in your convoy had appreciated that another convoy was approaching them it would have been an easy matter for those in the stern tier to stop and reverse, they were free to do that, were they not?

A. They were free to stop and reverse, yes, sir.

205 Q. What was the space between the three tiers, how many yards about?

A. I don't recall, the orders were to keep close.

Q. I suppose it was a matter of several hundred yards, wasn't it?

A. No.

Q. I remember that Mr. Asserson said that the space between one division and the other, one tier or line and the other was 600 to 800 yards in his convoy?

A. Yes, 800 yards zigzagging, 600 yards no zigzagging, ships in column 400 yards, according to sailing orders the space between one tier and the next tier was 400 yards.

Q. Now what was the space between the boats in the same tier?

A. 600 when not zigzagging and 800 when zigzagging.

Q. They spread out when zigzagging?

A. Yes, sir.

Q. And it was clear enough weather at the time of this accident for you to make out the four or five boats in the first tier and three or four in the second?

A. Roughly, that is my recollection.

Q. You could see then about three quarters of a mile or so, do you think?

A. Three quarters of a mile, I should say we could see three ships probably could see the loom of them, possibly not that much, let me see, yes, I think we could upon the side, that is somewhat indefinite to me, at least indistinct I might say.

Q. Can you give us the names of the boats in the head tier?

A. I cannot.

Q. Isn't there some document that gives that?

A. No, we had a sheet showing that.



206 Q. You have had a great deal of experience as a navigating officer, haven't you?

A. I have had experience, yes, sir.

Q. Are you a Naval Academy man?

A. Yes, sir.

Q. What year?

A. 1904.

Q. If as a matter of fact the boats in your convoy were turning to the left after the Ansaldo III blew those two blasts the worst thing in the world would be for the eastbound convoy to turn to the right, they should have turned to the left, too, isn't that plain common sense?

A. Not in this case from what I subsequently learned from the Italian commandore, he stated to me that they saw a mass in front of them and they turned one way to avoid it, which they did, in avoiding the first mass there was another one looming up immediately in front of them and they were turning away from that when they struck the other ship, that is my recollection.

Q. That is the Ansaldo struck the Otto Sverdrup?

A. I don't know the name of the other ship.

Q. This report of yours, Exhibit 3, was made out of courtesy to the Italian Commission?

A. No, sir, it was an official report required to be made by the commanding officer to the commander of the patrol squadrons based on Gibraltar, who was the senior United States naval officer at Gibraltar.

Q. Did you appear before the Royal Italian Commission?

A. No, sir, I appeared before the court of inquiry at Gibraltar.

Q. That court was convened to pass upon the conduct of the American naval vessels only?

207 A. No, sir, all affairs in which convoys engaged, whether attacks by submarines or collisions were subjects of courts of inquiry upon the return of the escort to Gibraltar, to determine, to officially determine, whether submarines were sunk or not.

Q. It was not to determine whether any blame attached to any of the commanding officers?

A. That incidentally would follow, if blame were attached it would be included in the report of the inquiry.

Q. Your conversation with the Italian commandore was where, at Gibraltar?

A. On the Yankton the morning after the collision.

Q. Was he on board the Ansaldo?

A. No, sir, on board the Yankton.

Q. I mean had he been in command on the Ansaldo?

A. Yes, sir, it was his flagship.

Q. He was responsible for the whole convoy?

A. For the maneuvers, laying off courses and general conduct.

Q. He had no direct authority over you?

A. Yes, being senior naval officer he had.

Q. And over the other Italian officers?

A. Yes, sir.



Q. He himself in self-defense so to speak said that he turned to the left to avoid one vessel and then turning to the right encountered another?

A. Turned to the right I think as I recall it now, he avoided two vessels before he struck the vessel that sunk.

Q. You don't know?

A. No, I don't.

Q. Well, he also appeared before the court or tribunal of  
208 inquiry I find from the paper I have in my hand and was criticized for not having stopped and reversed his engines, did he say anything about whether he stopped or did not stop?

A. Not that I recall.

Q. Did you know a boat in the convoy called the Albatross?

A. I don't recall.

Q. I understand that she was the starboard boat in the third tier, the Albatross, if she was in that position, the starboard boat in the last tier, I repeat the question I put to you before, there would not have been the slightest difficulty in her stopping and reversing?

A. To avoid collision?

Q. Yes.

A. I am unable to say that.

Q. But any boat in the last tier—

A. There is nothing to prevent her from stopping, but to avoid collision, I would not like to add.

Q. It was you who added the expression, to avoid collision, I said there would not have been the slightest in her stopping and reversing?

A. No.

Q. You don't recall whether she switched on her lights or not, do you?

A. I do not.

Q. There were no boats in front of you, that is no lights seen about directly in front of you, were there?

A. No, sir.

Q. And you saw a considerable number of lights on your port hand?

A. Well, when I say in front I mean directly ahead, these lights red and white lights were seen a little bit ahead of the convoy as they were coming together, that is for instance, this boat was going through, probably her red light was visible ahead of our convoy.

209 Q. What I want to ask you is, how many points on your port bow did you see any red lights?

A. That I cannot recall.

Q. Cannot you search your memory and say whether it was two or three or four?

A. Not that way, the lights seemed to be in a confused mass, red and green and white lights.

Q. Well on your port hand?

A. Well, on the port hand.



Q. How much forward of the beam or how much on the port hand of the line of the ship, your best judgment of course, you cannot say accurately?

A. I should say close to the first line of our convoy, close in the midst of the first line.

Q. So the furthest forward would be very little forward of your beam?

A. Quite right.

Q. Which indicates that the approaching convoy, if there was one, was well up on your port hand?

A. Yes, the collisions seemed to be—it subsequently developed they were all on the port hand, well off.

Q. Did you have any talk with the captain of the Lamington?

A. No, sir.

Q. You know she was in your convoy?

A. Not without referring to a diagram I would not be able to say.

Q. She was the third boat from the starboard side in the second tier or line, the third boat from the starboard side of the second tier?

A. The Lamington?

Q. Yes.

A. I don't see her in this list at all, she must have been added afterwards.

Q. Do you know what speed you were making?

A. 7.3 knots, the log shows, about that.

210 Q. Did they all have wireless?

A. That I am unable to say, the Ansaldo did and the vessels of the escort did.

Q. In your log I see that it was 11.50 when you observed one ship steering in opposite direction and stood apparently through formation?

A. Yes, sir.

Q. That was about 10 minutes after the Ansaldo blew her two blasts, wasn't it, which you say was at 11.40?

A. 11.40.

Q. Those figures are nearly accurate, you meant to make an—

A. The officer of the deck put those down and I have no reason to doubt.

Q. That there was an interval of 10 minutes from the time he blew the two blasts until the ship was observed standing through formation?

A. I have no reason to doubt it, no.

Q. Then you have an entry 12.10, another ship turned and stood to the rear to the convoy, was that one of the merchant ships?

A. Yes.

Q. That is 20 minutes after, a long time after, do you think that is comparatively accurate, that seems a period of say 20 minutes from the time the first boat stood through?

A. Yes, sir.

Q. Do you think that is substantially correct?



A. I have no personal recollection of that but as it states there in the log I have no doubt but that it is accurate.

Q. That is followed immediately by this: "During this time ships of convoy showed all navigational lights and there was a great confusion of whistle signals," that is the first entry of any whistle signals except the one of the Ansaldo, but there is a little

earlier an entry which relates to 11.40 p. m. as follows: "At  
211 about this time ships were thrown into great confusion" and  
30 minutes later the entry states that another ship turned  
and stood to the rear through the convoy, the same expression is used, "During this time ships of convoy showed all navigational lights and there was a great confusion of whistle signals"?

A. That has reference to the entire episode I would call it from the time the Ansaldo turned on her white light and blew two whistles.

Q. You observed this confusion?

A. Yes, sir.

Q. And you remember a considerable amount of signalling, do you?

A. I don't remember it now.

Q. Independently of this entry you would not recall?

A. I do not recall it now.

Q. But you have no doubt in your mind that there was a great deal of confusion of lights?

A. Yes, sir, going in different directions.

Q. Can you enlighten us on this—the great length of time, the 30 minutes between the time when the Ansaldo flashed on her light for 10 seconds and blew two blasts to the period when there was this great confusion?

A. No, the period of great confusion occurred, or at least the great confusion covered the entire period.

Q. That is just an additional entry to show that during the whole period—

A. Yes.

Q. Do you mean to say this period lasted 30 minutes?

A. Yes, the last order there and the whistles there.

Q. What did you, captain, at the time think was happening?

A. First I thought, a natural thought to me, that there was another attack by submarine, having been attacked earlier in  
212 the evening and as no signals were made of the presence of a submarine or attack having been made—

Q. What is that signal by the way?

A. It was a Verry signal, burning a light steady, it was a light signal of some kind or other, either Verry or some other signal made by a light.

Q. That signal was not made, then you were satisfied it was not a submarine, then what did you do?

A. I recall being in a quandary as to what had taken place, the thought that we were in collision did not occur to me at the time, neither did it occur to the other officers, we went to general quarters when the first signals, when the lights were seen and the men were



at their stations, and I recall that we discussed, the officers discussed the matter and I recall no one suggesting that we had met another convoy or that we were in collision.

Q. How far off to starboard of the starboard boat in the first line were you, how many yards?

A. I don't recall.

Q. About?

A. I cannot recall because our zigzag brought us sometimes close in and sometimes far out.

Q. What is the range, a couple of hundred yards to close?

A. Probably 600 yards at night-time, it was difficult to determine that with any accuracy, the orders of the officer of the deck was to never lose sight of the ship on the flank.

Q. It was not until next morning you learned there had been a series of collision?

A. No.

212a

LIBELLANT'S EXHIBIT 3.

252-67.

U. S. S. Yankton, July, 1918.

From: Commanding Officer.

To: Commander Patrol Squadrons Based on Gibraltar.

Subject: Report on voyage of convoy Ga.G. 36.

1. On the afternoon of July 3rd, attended a conference of the commanding officers of the escort vessels followed later by a conference of captains of merchant vessels in convoy. Was informed that Rear-Admiral Sicardi, Italian Navy, would be the Commodore and his flagship would be the Italian ship Ansaldo III. The S.N.O. of escort would be Captain McKay, R.N. on H.M.S. Coreopsis. I was informed that the Coreopsis might not be ready at the time designated in which event the Commanding Officer of the Italian destroyer which was to accompany escort to Marseille rendezvous would be S.N.O. When the destroyer left the Commanding Officer of the Yankton would be S.N.O. of escort. A plan of procedure was determined upon by the escorts in the event of an attack by submarines.

2. On July 4th about fifteen minutes before leaving, a verbal message was delivered by an Italian naval Officer to the effect that the Commanding Officer of the Yankton would be the S.N.O. of escort until the arrival of the Coreopsis which was not then ready to proceed. At 8:45 (10:45 GT) hauled out from dock and proceeded out of harbor to forming up rendezvous of convoy. At 10:55 formation of convoy, having been completed, proceeded on course 180° true at speed of five knots, increasing to seven and one-half knots at 11:45. Formation in three lines abreast, eight, seven and three ships respectively in each line. Commodore heading column, "VA", Yankton on starboard flank one point forward of beam of first line. Italian escort ship Bengazi on starboard flank abaft beam of second line, H.M.S. Achenar on port flank, one point

212b



forward of beam of first line. Italian destroyer Granatierre, astern. Escorts zig-zagging. Eighteen ships in convoy.

3. At about 6:45 in latitude 43° 25' North, longitude 8° 28' East, on course 214° true, the British ship Merida was torpedoed. The Merida was the second ship in the second column, port flank. It was observed that the Bengazi had turned left, was heading for a ship that was falling astern. Went to general quarters, full speed ahead, came about on a reverse course, and headed in the direction of the torpedoed ship. At 7:06 let go a depth charge set at one hundred fifty feet, which detonated. At 7:09 let another go set at one hundred fifty feet, which detonated, the course having been changed 20° to the left in the interval. The Bengazi was observed to be dropping depth charges and firing with her port battery. At 7:10 the Italian destroyer opened fire. The Achenar was observed to be standing by the torpedoed ship. Circled about, observed no indications of  
212c submarine. As the convoy was now without escort and darkness closing in, headed to rejoin convoy, resuming position about 7:55. No signals that a submarine had been observed were shown by any of the ships. After the attack was made convoy's course had been changed four points to the right, then four points to the left.

4. The Bengazi acted promptly and according to prearranged plan. Her part was to cover astern and the starboard flank dropping depth charges on a curve of search. The Yankton was to cover the front starboard flank in the event of the attack coming from that direction. The Bengazi informed me by Radio that the Merida was afloat, that the Achenar had her in tow, that Genoa had been asked to send tugs, also that the Bengazi had sunk the submarine with her depth charges, and that she was rejoining convoy, having been ordered to do so by the Commanding Officer of the Italian destroyer.

5. At 8:30 changed course to 247° true. At 10:30 changed course to 261° true. At about 11:40 a white light was observed which was thought to be on the Commodore's ship, remaining on about 10 seconds. Blasts of whistles followed, whereupon a number of ships turned on navigational lights, a great confusion of whistles, some one blast, others two blasts, others three blasts. Ships in the center and left in great confusion. At 11:50 green and red lights were observed steering in various directions. One ship observed steering in opposite direction to course of convoy and  
212d stood through the formation. Ships on our flank turned on lights, steered to right, then to left. I was unable to determine what had taken place. My first impression was that a submarine attack had taken place, but no warnings to the effect were given. The confusion of whistles and lights moving in many directions continued until about 12:15. Maneuvered at full speed so as to keep in touch with as many ships as possible and finally steered on course 261° true, having five ships together. A few other ships were observed in the darkness well off on port hand.



6. At 1:30 a. m. July 5th, changed course to 251° p. s. c. which course had been arranged before darkness. Speed of convoy about 8 knots. At daybreak (about 3 a. m.) sighted ships off on port hand. As light increased counted eleven ships. With increasing daylight made signals and rounded up all ships in sight, slowing them down to five knots and reforming convoy. At 5:00 smoke of other ships was seen on the horizon. Seventeen ships had rejoined convoy by 6:30, the last being the Ansaldo III, the flagship of the Commodore. When within signalling distance the Commodore informed me his ship was in distress, due to a collision that had taken place during the night and requested me to take him on board the Yankton. Went close aboard and with life boat took off the Commodore, his aid and his staff of Italian and English signalmen, with baggage. Speed was increased to seven and one half knots and course laid for Marseille rendezvous, which position was reached about 8:30, then stood to the westward.

7. I learned from the Commodore that our convoy had met another convoy standing in opposite direction and that a number of collisions had taken place; that the Commodore ship had struck another amidships and had probably sunk her; that no warning of the approach of the other convoy had been given, the first seen of them was when they were close aboard, and that the Ansaldo had maneuvered to avoid striking two ships and in so doing had struck another. I received reports from two other ships in convoy, that they had been in collision during the night, that they had sustained damages above and below the waterline and were unfit to proceed to Gibraltar.

8. As the Bengazi had expended all her depth charges I deemed it advisable for the destroyer to accompany convoy to Spanish waters, and after consultation with the Commodore she was directed to do so.

9. At 2 p. m. I detached injured ships to Marseilles with orders to proceed at best speed, zig-zagging. I informed S. N. O. at Marseilles, requesting an escort, giving position of the detaching of the ships, which was about sixty miles from Marseilles. I then proceeded to the Spanish coast making two changes of course to reach it.

10. At 7:00 a. m. July 6th reached Spanish territorial waters, Cape Sebastian bearing 11° true, distance six miles. Formed convoy into two groups of six and seven ships respectively. The first group to make ten knots, Bengazi escort; the second group eight knots, Yankton escort. At his own request, I transferred Rear-Admiral Sicardi, I. N. to the American ship Plymouth, guide of the first group. Both groups to proceed to Gibraltar, keeping within territorial waters.



*Memorandum of Facts Given by Marcus Aurelius Goodrich, Formerly Ensign on U. S. S. "Yankton."*

May 27, 1920.

The U. S. S. "Yankton", which was one of the ships conveying the colliding vessels, was capable of a maximum speed of but 10 knots, and was traveling at the speed of the convoy on the night of the collision, which, as I remember, was 6 or 7 knots. The officers of the "Yankton" who were on board at the time of the collision and their addresses, as I remember them, are as follows:

Lieut. Comdr. Burns, Commanding Officer.  
Lieut. C. P. Cecil, Second Officer.  
Ensign Robert Eaches, Watch Officer.  
Lieut. Gombрил, Watch Officer.  
Lieut. Brennan, Watch Officer (Reserve).

The enlisted men on board at that time, who probably were on the bridge during the collision or who had any knowledge of the night's operations and things pertaining to the ship, were the following Quartermasters:

E. M. Grabill, Q. M., 3rd class, Mt. Sterling, Ohio, c/o I. M. Grabill.

John Koenig, Q. M., 1st Class, Philadelphia, Pa.

Ensign Marcus Aurelius Goodrich, 17 West 84th Street, New York City (formerly Signal Q. M., 2nd Class).

214 On the night this collision happened, the "Yankton" was proceeding with a convoy consisting of some 20 or 24 vessels and 4 other escort war ships, from Genoa to Gibraltar. The convoy was formed in regular convoy formation and, as was previously stated, was traveling at a speed of from 6 to 7 knots. The convoy formations changed about every three months due to the changing tactics of the submarines. The method of conveying ships at the time of the collision was for the ships to travel in four divisions, each division being a horizontal line and each one of these divisions being designated by a letter, the particular ships in each division being distinguished by another letter being appended to the first letter, such — AX, AB, etc. On each corner of the convoy—the convoy forming a square—there was an escort war vessel. The "Yankton" stationed in this particular convoy was either on the port bow or the starboard bow, I don't exactly recall now.

Around twelve o'clock, when I was just going off watch or just coming on—I don't recall exactly which—there was a sudden booming crash, which we at first mistook for a ship being torpedoed. This was rapidly followed by lights flashing on through the convoy. Inside of twenty minutes all the ships were going helter skelter. The officer of the deck immediately called the Captain, who gave



orders that we were to proceed close to any of the ships that were near us and order them to put out their lights. We did this, 215 but without result, because as soon as we ordered them to put out the lights and had left them, they would put the lights on again.

There were two or three crashes after the first one, which we finally realized were collisions instead of torpedo explosions. In order to avoid further collisions and get the ships out of a position in which they would keep their lights on, the Commanding Officer gave emergency orders, which caused the ships to proceed 180° to the left. This order was flashed by means of a tube blinker. Most of the ships to which we succeeded in signalling this order turned sharply to the left and proceeded with us. We were unable to tell exactly how many had followed us until early the next morning. This turning sharply to the left took us out of the zone of the collision and, of course, prevented us from having any further knowledge of what had happened. The above is briefly the story of this collision.

Some of the details regarding this particular convoy and all other convoys which were operating around this time follow, because they may be of some interest and may throw some light on this case.

In a convoy there is but one ship that is permitted to stop in the event of any disaster, such as man overboard, ship torpedoed or any contingency whatsoever, and that is the ship that is called the "stand-by" and takes the position directly in the rear of the convoy. All other vessels must proceed on regardless of what may happen. On this particular night, as we were in charge of the convoy and 216 it was our duty to proceed in the convoy, we took no further cognizance of what happened after we had given orders to proceed 180° to the left. This is a law which holds good regarding all convoys.

In this particular zone, torpedoing of vessels by submarines was a very common occurrence, and, consequently, all ships passing through this zone were always on the alert. A little further towards Gibraltar it was the custom of convoys, when having received submarine warnings, that the ships were to head for the Spanish Coast in order to get within the three mile limit where they were supposed to be safe from submarines. This rule was adhered to very strictly, so that in this particular case, the reason why the two convoys were pursuing the same course may have been because they followed out this idea of heading for the coast, due to the numerous submarine warnings which reported submarines active in the region in which both these convoys were.

A typical submarine warning with the code group signifying a submarine is given below in detail, with the names, dates, etc., exactly as they were in the original message:



"ALLO — ALLO

36 18 — 0258

0 1 0 0"

The Allo, which we pronounce just as it is spelled for convenience sake, signifies:

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"Submarine Sighted"

(It is supposed to be secret).

The numerals right below—36 18—signify latitude, and the numerals 0258 signify longitude. The third group—0100—signifies the hour. These messages are broadcasted by the vessels sighting the submarines and are picked up by the stations receiving the message, such as Gibraltar, Genoa and Bizerte, and again broadcasted all over the region, so that all vessels, convoys and stations know the location of the enemy. As previously remarked, these Allo messages were picked up on the night of the collision and indicated that submarines were active in close proximity to where the convoys were steaming.

Most of the merchant ships in the convoy at this particular time had no wireless apparatus, so that they usually had no idea of the nearness of submarines, and it was, therefore, very hard to get them to obey the precautionary rules which the convoy vessels laid down. Whenever the merchantmen did become aware of the presence of a submarine, they would get in a panic and their overzealousness in trying to get away from the submarine was often quite as much of a hindrance as their lack of knowledge of the presence of a submarine. The convoys always steamed without lights and in very close formation for such large and cumbersome ships.

On the particular night of the collision it was very dark and the ships were steaming so close that they could be seen as big dark blotches.

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On the night of this collision, our vessel, the "Yankton," had warned, by means of signals, the merchant vessels under our convoy of the presence of submarines ahead of us, in order that they would use some strictness in complying with our instructions. The vessels of our convoy were, therefore, aware of the danger and intent on that account, and it is very probable that the same is true of the convoy with which we collided.

In our convoy—that is the convoy of which the "Yankton" was in charge—trouble was especially expected because it was the 4th of July. The Germans had the habit of entering into the spirit of such occasions by making, both for the British and the Americans, particularly memorable holidays by extra attacks and torpedoings. As this trouble was expected, everybody in our convoy was on the *que vive* for trouble.



I might mention that orders were established that navigation lights should be ready to display in case of collision, but only in the most dire emergency was this to be done. Perhaps this explains the readiness with which these lights were displayed on the night of this particular collision.

It is indistinct in my memory whether the convoy in which the "Yankton" was the senior escort vessel, was or was not attacked by an enemy submarine just a few hours previous to this collision. It may have been on another convoy that this attack was made, but it seems to me that it was this convoy and a few hours before this collision occurred. However, this is not important, as there were numerous submarine warnings of attacks in this region.

It is very doubtful whether copies of the confidential convoy orders under which these convoys were operating could be obtained at this time. The orders were very poorly arranged and were not typewritten, but were gotten out by sort of mimeographing and in long hand. They were often illegible and smeared, often lacking in sense and the contents were very hard to ascertain.

The system of giving these orders and of distributing them was so poor and would reflect so little credit on the British system that even if they did contain information that would be of value in this case, the British Admiralty in order to save its own face, would keep them secret. Only the Commanding Officer of the chief vessel was supposed to have access to these orders. On the American ships everybody connected with the bridge—that is the Captain, the Watch Officers and the Quartermasters—were allowed to use them, because often only the Quartermasters and Watch Officers were on the bridge and were responsible for the ship's operation. Usually these orders contained instructions to proceed on a zigzag course. This zigzag course called for sharp turns from the left to right, alternating at 12 and 15 minutes' time, but resulting finally in bringing the ship to its point of destination just as if she had proceeded on a straight course. This zigzag course was always maintained unless the convoy made over 12 knots or was near the Spanish Coast three mile limit.

Signalling in the day time was done by the International Code flags through a special code called the "Convoy Signal Code." At night there was a system of signalling by blinker tubes based on this same convoy signal code. On most ships that sailed under these convoy systems, they would place British signalmen, whether or not an American war vessel was in charge of the convoy. As a result of this there was little difficulty in communicating with the ships of the convoys at any time. All ships were forbidden to communicate with wireless, unless it was absolutely and urgently necessary, and this rule was strictly adhered to.

The Germans always seemed to be perfectly aware of the time of sailing of convoys, of their destinations, of the important ships in the convoys, and of what signalling took place between the convoys when they were in a position to see the same.



In convoys where there was an important ship—carrying ammunition, for instance, it was the custom to place it in the middle of the convoy or some place where it was difficult to hit, and it was invariably the case that this important ship would be the one to be torpedoed.

Seven or eight out of every convoy that left Gibraltar or Genoa were intercepted by German submarines. This is probably  
 221 the reason why the later day convoy orders contained instructions to "alter course," upon receiving reports of enemy submarines operating in the immediate vicinity of the courses to be pursued by the convoy. It is an undoubted fact that at least one of these convoys that were in collision on the night of July 4th altered course, due, in my opinion, to the warnings of enemy submarine activities in the immediate vicinities of their respective courses.

It might be interesting to note that at the time of this collision the vessels of both convoys started blowing their whistles—short sharp toots. This was the conventional urgent signal for the presence of enemy submarines in the convoy and added immensely to the confusion of the two convoys and their subsequent movements, nearly everybody thinking at first that the crashes and lights in the convoy were due to submarines. It is a fact that on one occasion an enemy submarine steamed through a convoy with navigation lights lit, in order to get the ships of the convoy in its vicinity to light their lights, thus providing the submarine with a good target with which to fire its torpedoes.

The best and most accurate source of information regarding the speed of these convoys on this night can be obtained from the official logs of the U. S. S. "Yankton," which was in charge of one convoy, and of the U. S. S. "Castine," which was in the other convoy.  
 222 It is doubtful whether the British Admiralty will permit an investigation of the log of any British war vessel which may have been present in the convoy, but it will undoubtedly be easy to gain access to the American war ships' logs. There is also a record of all official signals sent from and received by the U. S. S. "Yankton" in a book called the "Official Signal Book." Access to this book for this period should be as easy as access to the official log.

Lieut. Comdr. Burns is now, I believe, on inactive duty.

Lieut. P. C. Cecil is still in active service.

Ensign Robert Eaches is still in active service.

Lieut. Gombriel is still in active service.

Lieut. Brennan is on inactive duty.

E. M. Grabill is undoubtedly out of the service.

John Koenig I have no knowledge of whatsoever.

It is interesting to note as a point of seamanship that in dealing with large slowly moving ships of the type that were in these convoys and which carried very heavy loads, that the ease with which they manoeuvre is not very great. Start them going ahead 6 to 7 knots and it will be a matter of minutes before they can be set to going



astern. Their movements to port and starboard are very sluggish, so that sudden attempts by them to avoid collision and unexpected obstacles are generally always unsuccessful.

Under the conditions under which these convoys were operating on the night of the collision, it was only with the greatest difficulty that distance could be judged, ships appearing at 150 and 200 yards as if they were big hulks of black, no outlines being distinguishable.

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No. 20.

*Opinion of Mr. Justice Hill.*

Admiralty Division, Wednesday, July 27, 1921.

Collision—Meeting Convoys.

Cotonifici Riuniti di Salerno and Lamar Fleming, Jun., "Lamington."

Before Mr. Justice Hill, Sitting with Captain Sir A. W. Clarke, K. B. E., and Captain Owen Jones, C. B. E., Elder Brethren of Trinity House.

In this case the plaintiffs, the owners of cargo lost with the Greek steamship "Napoli" sued the owners of the Glasgow steamship Lamington to recover damages for the loss of their goods consequent upon a collision between the two vessels in the Gulf of Lyons on July 4, 1918. The defendants denied liability.

Mr. C. R. Dunlop, K. C., and Mr. Lewis Noad (instructed by Messrs. Parker, Garrett & Co.) appeared for the plaintiffs; and Mr. D. Stephens, K. C., and Mr. A. T. Bucknill (instructed by Messrs. W. A. Crump & Son) represented the defendants.

According to the statement of claim, shortly before midnight on July 4, 1918, the Napoli, a steel twin screw steamship of 9,210 tons gross and 470 ft. in length, while on a voyage from New York to Genoa, in convoy, laden with a cargo of general goods, was in about latitude 43 deg. N. and longitude 7 deg. 58 min., E. The wind was light westerly, the weather hazy and the tide unknown. The Napoli, on a course of N. 55 deg. E., was making about 7½ knots. The regulation lights were screened but burning brightly; ready for instant exhibition, and a good look-out was being kept.

In these circumstances a convoy was made out about ahead. The lights of the Napoli were at once exhibited, and shortly afterwards, as the vessels in the other convoy showed red lights, her helm was ported and a short blast blown. After clearing some of the vessels, as the convoys were observed to be crossing in all directions, the engines of the Napoli were stopped. When the green light of the Lamington suddenly appeared on the port side, about 150 metres distant, the helm of the Napoli was put hard-a-port and her engines



full speed astern, as there was a large vessel lying ahead across her course. The Lamington came on at high speed and with her stern struck the port side of the Napoli about No. 3 hold, doing so much damage that the Napoli sank soon afterwards.

Plaintiffs alleged that those on board the Lamington negligently and improperly failed to keep a good look-out; failed to keep clear, starboarded her helm; failed to ease, stop or move in due time; failed to exhibit navigation lights in due time; and failed to comply with Arts. 1, 2, 18, 23, 27, 28 and 29 of the Regulations for Preventing Collisions at Sea.

The case for the defendants was that shortly before 11.40 p. m. the Lamington, a steel screw steamship of 3,539 tons gross register and 350 ft. long, while on a voyage from Genoa to Melilla, in ballast, was in about latitude 43 deg. 8 min. N. and longitude 7 deg. 46 min. E. The weather was clear but very dark, with a light  
226 variable wind, and there was no material tide. The Lamington was one of a large convoy navigating in column abreast, and was steering the convoy course of N. 89 W., and was proceeding at a speed of about six knots. Under Admiralty instructions, the regulation under-way lights of the Lamington were screened, but were burning brightly, and were ready for instant use if necessary. A good look-out was being kept.

In these circumstances, those in charge observed a number of red and green lights at different distances ahead and on the port and starboard bows. The side lights of the Lamington were immediately unscreened and exhibited in their proper places, and the course of the Lamington was altered as required and the appropriate whistle signals were sounded in order to bring the other lights into a safe position. Shortly afterwards, and when the Lamington was heading about W. (magnetic), the green light of a steamship, which subsequently collided with the Lamington and which the plaintiffs did not deny was the "Napoli", was observed about two cables distant and bearing fine on the starboard bow. Those in charge of the Lamington, on sighting the green light, sounded two short blasts on the whistle and starboarded the helm. The green light of the Napoli broadened on the starboard bow, but shortly afterwards the Napoli showed her red light and her green light disappeared. The engines of the Lamington were at once put full speed astern and three short blasts were sounded on her whistle. Very shortly afterwards the  
227 port side forward of the Napoli collided with the starboard bow of the Lamington, doing damage to the Lamington.

Defendants pleaded that those in charge of the Napoli were negligent in that they did not keep a good lookout; improperly ported their helm; failed to indicate by whistle signal the course taken by them; did not stop and reverse their engines in due time or at all; did not exhibit their navigation lights, or any of them, in due time; and did not comply with Arts. 1, 2, 27, 28 and 29 of the Collision Regulations. Alternatively, the defendants said that, so far as they and their servants or agents in charge of the navigation and management of the Lamington were concerned, the collision was an inevitable accident, and could not have been avoided by the exercise



of reasonable care and maritime skill on their part or on the part of their servants or agents.

*Judgment.*

Mr. Justice HILL, in giving judgment, said: This is a claim arising out of a convoy collision. I thought we had seen the last of them, but here is still a survivor. I know that it is generally thought that the increase in the work of this Division, which puts so great a burden upon us all, is due to war conditions, but, so far as this term is concerned, I think we have had only one other collision case which was in connection with the War. In my view, the growth of the

work in this Division last year and this year has nothing to do with war conditions, but is of a permanent character.

In this case the collision happened on the night of July 4, 1918. The two ships, the Napoli and Lamington, were in different convoys. I may mention that the action is not by the owners of the Napoli, but is brought by the owners of cargo lost with the ship. The Napoli in consequence of the collision sank. The ships were in separate convoys, which met in the Gulf of Lyons. They were travelling without lights, and only switched on their lights when they became aware of one another's presence. The convoys were on courses not exactly opposite, the Napoli's convoy course being N. 55 E., and the Lamington's convoy course N. 89 W. The ships of the two convoys became terribly confused, and there were several collisions, including this collision. The question is whether anybody has made out any negligence. The pleadings allege negligence in various respects each against the other, but, as the matter has been argued, the Lamington says the collision was due to the inevitable result of the convoys crossing one another and getting mixed up. The plaintiffs say that there was negligence on the part of the Lamington because she did not reduce her speed. That is a question I have to consider.

I gather that the Napoli was in the centre column of seven columns. I am not quite sure that I gather the line. The Lamington was in the first column of a number of columns, and was in the second line. The convoys sighted one another at a short distance.

229 I accept the evidence for the defendants that it was something like 350 yards. The lights were switched on. Each of these ships and the other ships made a number of manoeuvres, ported and starboarded, to avoid other ships, and finally these two collided. When I say "finally," I have taken almost more time to describe what was taking place than was probably occupied between the time of sighting and the collision. The speed of the Lamington was six to seven knots, and the speed of the Napoli was, in convoy, seven and a half knots. The Napoli says that she slowed and stopped, but, even, assuming that to be the case, the joint speeds must have been still 10 to 12 knots, at least until a very short time before the collision, and, therefore, the whole thing must have happened in a very short time, probably a minute. There was undoubtedly great



confusion, and, according to the Master of the Napoli, all sorts of whistle signals were being sounded by many ships.

The Napoli's account, I gather, of what happened is that, having slowed and then stopped, the green light of the Lamington was seen 150 metres away, as pleaded, on the port beam, and the Napoli hard-a-ported and went full speed astern. That port beam is altered in evidence to three points on the port bow. The Lamington says that what happened was, that she saw the green light of the Napoli about three lengths away—or, as pleaded, I think it is rather further, two cables—fine on the starboard bow. The Lamington starboarded.

The green light broadened, and then the red opened, and the

230 Lamington went full speed astern, and the collision followed.

The pleaded case of the Napoli on the causes obviously will not bring about a collision at an angle of seven points heading aft on the Napoli, which is the agreed angle; and, when I find so great a difference between the evidence case of the Napoli and her preliminary act case, in so important a particular, I am quite incredulous as to the Napoli's evidence, and I am quite unable to act upon it.

On the other hand, the Lamington's Master has given his evidence this morning, and given it very well, and I accept it. The difficulty in accepting it is to reconcile the angle with the starboarding and hardastarboarding of the Lamington and the hardaporting of the Napoli, if the Napoli had first gone slow and then stopped and had her engines stopped and very little way at the time she saw the Lamington. I am incredulous about this evidence of the Napoli, and I do not know that her engines were stopped. I am really not at all sure that the lights which each says they saw on the other ship were the lights of the other ship, or were not the lights of other vessels in the convoy; and, apart from any question of speed of the Lamington, it seems to me to be quite clear that this is one of those cases in which two convoys, unlighted, suddenly became aware of one another's presence at a very close distance, became greatly confused in their formation, and in their efforts they made to avoid one another, without any fault on the part of anybody, the collision took place.

Can I find any blame in the Lamington for not reducing

231 her speed of something over six knots? What she does, is to reverse when she sees the green light of the Napoli change to red. I am inclined to accept the evidence that that really did take place, and to think that the immediate cause of the collision was the porting of the Napoli and nothing else. But still, I have to consider speed, because it no doubt had effect upon the damage to the Napoli, and, therefore, if it was improper, the Lamington is to blame. The whole thing, as I have said, happened in a very short time. The Lamington had avoided a number of ships and successively succeeded in avoiding several before she met the Napoli. I have asked the Elder Brethren whether it was wrong from a seamanship point of view, in the circumstances, for the Lamington not to take off her way, and they are unable to advise me that it was wrong.



I do not know whether it is for me or for them to say whether it was negligence, but they say they do not think the Master of the Lamington was to blame for not taking off his way.

I therefore find that no negligence has been established against the Lamington in that respect, and that is the only respect in which it is said she was to blame.

The action fails, and, as it is a claim by cargo-owners against ship-owners, there must be judgment for the defendants with costs.

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No. 21.

*Affidavit of Charles Hann, Jr.*

STATE OF NEW YORK,  
County of New York, ss:

Charles Hann, Jr., being duly sworn, deposes and says, he is an attorney and counselor-at-law and associated with the firm of Big- ham, Englar, & Jones, 64 Wall Street, Borough of Manhattan, City, County and State of New York.

That on January 20th, 1922, he visited the Record Room, United States Custom House, New York City, where on presentation of letter No. 184, under date of January 18th, 1922, from Italian Government Commission, by V. Cantalupi Esq., Mr. Charles Siebert, who was in charge of said Record Room, permitted deponent to see the official copy of the cargo manifest of Italian steamer "Napoli" for her voyage from the Port of New York on June 4th, 1918, to Genoa, Italy, and the shippers' export declarations for all cargo for the same voyage.

That the following entries appear, inter alia, in the shippers' ex- port declarations made in New York for various shipments to Italy:

A-AA R. A. C. 14.

Shipped by Italian Ministry of Shipping for National Surgical Dressing Committee, 28 cases surgical dressing to Capitaneria Porto Genoa for Italian Minister of Marine.

233 Shipped by Italian Ministry of Shipping, 40 cases contain- ing 100 standard size propellers—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 200 drums glycerine, 280,000 lbs.—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 143 cases supro nickel— Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 3 cars pig iron— Consignee, Royal Italian Government. Shipped by Italian Ministry of Shipping, 4 cars of pig iron—Consignee, Royal Italian Govern- ment.

Shipped by Italian Ministry of Shipping, 110 cases sheet brass— Consignee, Royal Italian Government.



Shipped by Italian Ministry of Shipping, 163 bars of steel—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 110 boxes aluminum sheets—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 4 motor boats, \$160,000., export license T. L. 198—T. 122—Italian Government Cont. #87 R. M. Elect. Boat Co., Bayonne, N. J.—Consignee, Royal Italian Navy.

234 1589. Shipped by Italian Ministry of Shipping a/c General P. Tozzi, 144 cases brass discs \$28,565.—Royal Italian Government.

1588. Shipped by Italian Ministry of Shipping, a/c General P. Tozzi, 300 boxes aluminum sheets, 100,140 Lbs.—\$35,052, Royal Italian Government.

1587. Shipped by Italian Ministry of Shipping, a/c General P. Tozzi, 109 boxes brass discs, 276 38—Royal Italian Government.

1397. Shipped by Italian Ministry of Shipping, 1 box containing locomotive parts, 10—Consignee, Royal Italian Government.

1396. Shipped by Italian Ministry of Shipping, 8 cases M. B. tubes Italian 80 foot sub-chasers \$1,500.—Consignee, Royal Italian Navy.

Shipped by Italian Food Administration.

17,111 Boxes D. S. Meat.....	\$237,542
2,548       "       " .....	343,187
1,402       "       " .....	188,082
408         "       " .....	{53,518
66          "       " .....	{80,775
590         "       " .....	8,303
600 boxes boiled beef .....	16,200
800 boxes condensed milk .....	11,974
21,951 boxes canned salmon .....	22,800
	162,356

Consignee—Italian Food Administration, Rome.

Shipped by Italian Ministry of Shipping, 500 bbls. grease, \$15.

340.—Consignee, Royal Italian Government.

235 Shipped by Italian Ministry of Shipping, 89 packages steam shovels, \$48,600.—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 2269 steel bars, \$10, 366.—Consignee, Royal Italian Government.

Shipped by Italian Ministry of Shipping, 237 cases cartridge brass—Consignee, Societa Metallurgia Italiana.

Shipped by Lionello Perera, General Delegate, Italian Red Cross, 63 Wall Street, New York, 12 cases Red Cross supplies, \$600, marked #77/88 Croce Rossa Italiana Genoa—Consignee, Italian Red Cross, Genoa.

Shipped by Peirce Brothers, Inc., a/c Emergency Italian Relief Commission, various marks and numbers, 20 cases wearing apparel, \$3,000.—Consignee, Robillant Italian War Relief Commission, Rome.



Shipped by Lionello Perera, General Delegate, Italian Red Cross, 63 Wall Street, New York, one ambulance from Waterbury, Conn.—Consignee, Italian Red Cross, Genoa.—\$2,500.

Shipped by Lionello Perera, General Delegate Italian Red Cross, 15 cases Red Cross Supplies from Brooklyn, New York, \$750.00—Consignee, Italian Red Cross.

236 Shipped by Lionello Perera, General Delegate Italian Red Cross, 11 cases Red Cross supplies from Los Angeles, Cal., \$1,000.—Consignee, Italian Red Cross.

Shipped by Peirce Brothers, Inc., (originally intended for shipment on S. S. "San Gennaro") 1200 cases motor gas, 12,000 gals. \$5,148.—Consignee, Italian Red Cross.

R. A. C. 43 Shipped by Peirce Brothers, Inc., a/c Lieutenant Albert Haftors, 45 Broadway, 1 case athletic equipment—Consignee, American Aviation training Units Camp, Foggia, Italy—\$150.

Shipped by Berry Brothers, Inc., Detroit, Mich., license 376315—marks N. C. Genoa 563-95 756-815 120 steel drums emallits, \$63,000.—Consignee, M. Casaletto—Societa Italiana, Aviazioni, Genoa.

Shipped by Berry Brothers, Inc.—M. C. Genoa 140-163 24 steel drums emallite, \$10,744.79—Consignee, M. Casaletto, Societa Italiana Aviazione, Genoa.

Shipped by A. Rivolta & Company 25 Beaver Street, New York, R. A. C. export license #14, issued to Italian Government, fir lumber for aeroplane construction \$4,548.—Consignee, Fratelli Foltrunelli, Milan, Italy.

Shipped by Vacuum Oil Company, a/c General P. Tozzi—U. S. Government, license R. A. C. 14 244 barrels lubricating oil, 237 12,200 gals. \$4,880.—Consignee, Sezione Staccata Direzione Tecnica Aviazione Militare, Genoa.

Shipped by E. W. Bliss & Co., (B. A. Messman, authorized agent) 17 Adams Street, Brooklyn, New York, 1 #27 artillery case heading press consisting of 1 piece and 19 cases, \$12,000.—Consignee, Societa Metallurgia Italiana, Livorno.

Shipped by American Red Cross, Fred Peterson, Agent surgical instruments, scalar lancets, rubber goods, perimeter, invalid rings, chloroform, stoves, mag. sulphate, quinine sulphate, drugs, anti tetanic serum, wax, hospital supplies, iodine resub, extract of beef, strychnine of sulphate, operating instruments, tree sprayers, Schamberg scissors, bed pans, absorbent cotton, retractors tissue finger cots, adrenalin chloroform sol.—Consignee, Major Perkins, American Red Cross Commission to Italy. (The above Red Cross supplies appear on several different export declarations.)

That the following are some of the entries in the manifest of the Italian Steamer "Napoli" for said voyage:

R. A. C. 14—934793—976620—Shipper—Lionello Perera—Cross Rossa Italiana—Consignee, Cross Rossa Italiana, Genoa 46/68/77/88 27 cases Red Cross supplies 4453 311 7.

R. A. C. 14—881656-13 Shipper—General P. Tozzi—Consignee—Ministero Armi E. Hunzioni—no marks—quantity of pig iron—342160.



238 10. Shipper—Italian Ministry of Shipping—Consignee, Capitaneria Porto—Genoa—Per il Ministero Della Marina—28 cases hospital supplies 3346 339 5.

11. Shipper—Italian Ministry of Shipping—Consignee, Istituto Nazionale Assicurazion: Iona-Roma—19 boxes steel cabinets—4625 301.

R. A. C. 874133 14 Shipper—General P. Tozzi—Consignee Sezione Staccata Direzione Tecnica Aviazione Militare Co. / Genoa M. S.—185 N. C. C. 59 244 lbs. lubricating oil 107465.

R. A. C. 1339 15 Shipper—General P. Tozzi—Consignee, Ministero Armi R. Munizioni—no marks—144 cases brass discs 87893.

R. A. C. 1587 16 Shipper—General P. Tozzi—Consignee, Regia Marina—no marks—109 brass discs 85039.

R. A. C. 881654 17 Shipper—General P. Tozzi—Consignee, Ministero Armi N. Munizioni—no marks—143 cases cupro nickel 86271.

R. A. C. 871142 18 Shipper—General P. Tozzi—Consignee, order Ministero Armi R. Munizioni Spedence General Tozzi—1 up 20 cases searchlight carbons 5832 90.

R. A. C. 895404 20 Shipper—General P. Tozzi—Consignee, Ministero Armi N. Munizioni—no marks—200 drums glycerine 28 000.

239 Lic. 1561324—929596 21 Shipper—General P. Tozzi—Consignee, Regia Marina, Regia Marina—40 cases standard propellers 15120 436 8 Lic. 1226972—1590 22 Shipper—General P. Tozzi—Consignee—Regia Marina—Regia Marina Costruzione 129 cases engine parts 67803—1759—5.

R. A. C. 14—881657 23 Shipper—General P. Tozzi—Consignee, Ministero Armi N. Munizioni—no marks—110 cases sheet brass 66271.

R. A. C. 14 (881659

( 1588 25 Shipper—General P. Tozzi—Consignee, Serione Staccata Aviazione Militare—no marks—400 boxes aluminum sheets—134203—4466-8.

Lic. 376315—916945 58 Shipper—Berry Brothers Inc.—Consignee—order notify Soc. Italiana Aviazione—N. C. Genoa 526/95—756/815 120 steel drums emallite 101029—2870.

Lic. 12444724—916946 59 Shipper—Berry Brothers, Inc.—Consignee, order notify Soc. Italiana transaerea N. C. Genoa 140/163 24 steel drums emallite 24016 574.

172. Entry Shipper—General P. Tozzi—Consignee Sezione Staccata Aviazione Militare—no marks—3139 bars of steel)

192 bales of steel) 442276

Shipper—Italian Food Administration—Consignee, Royal Italian Government—No marks—20701 boxes canned salmon 240 1449570 34477 8. Shipper—Italian Food Administration—Consignee, Royal Italian Government, various marks and number—6785 boxes D. S. meat—4396896 94204 5.

T. L. 198 T. 122 186 Shipper—General P. Tozzi, Consignee—Royal Italian Navy—Genoa—no marks—4 motor boats—(weight) 286720.



R. A. C. 14 580201 190 Shipper, General P. Tozzi—Consignee,  
Sezione Staccata Dire-Tecnica Aviazione Militare C. P. 4588 pieces  
spruce lumber—460452—

CHARLES HANN, JR.

Dated, January 31st, 1922.

Sworn to before me this 2nd day of February, 1922.

[Notarial Seal.] (Signed) EDWARD A. QUINLAN.

241 The Court: Do I understand, Mr. Houston, that you con-  
cede that the courses would have intercepted one another in  
any event?

Mr. Houston: We do.

Libellant rests.

Respondent rests.

No. 22.

(Letterhead of Burlingham, Veeder, Masten & Fearey.)

Napoli.

March 2, 1922.

O. R. Houston, Esq.,  
27 William Street,  
New York City.

MY DEAR HOUSTON:

You will recall that on the trial I told Judge Hough that I had  
cabled to Messrs. Crumps for a copy of the evidence in the Laming-  
ton case, tried before Mr. Justice Hill, and I expected on its receipt  
to submit it to the Court. I have now received a letter from Messrs.  
Crumps, enclosing the depositions of Captain Bologna and the sec-  
ond officer of the Napoli, which you have already submitted  
242 in our case, and nothing further. I had quite forgotten  
that in the English courts no formal record of the evidence  
taken in open court is made reliance being had on the notes of the  
evidence taken by the judge and counsel. It will be impossible, there-  
fore, for me to present the evidence of the captain of the Lamington,  
as I had wished.

As to the manifest, confirming our telephone conversation of this  
morning, we agree that you may introduce in evidence the extracts  
from the manifest of the Napoli which your representative made,  
provided it is admitted that the rest of the cargo was general in its  
nature and was consigned to private parties.

If you will indicate your assent to this agreement, we will submit  
this letter to Judge Hough with our brief on the facts, a copy of  
which we send you herewith.

Very truly yours,

CHARLES C. BURLINGHAM.

CCB/AP.

Enclosure.



The above disposition of the matter is quite agreeable to us, and we confirm the agreement you suggest.

HARRINGTON, BIGHAM & ENGLAR.

243

*Opinion, Hough, C. J.*

Final Hearing in Admiralty; Action upon Policy of Insurance.

Bigham, Englar & Jones (Mr. Houston), for Libellant;  
Burlingham, Veeder, Masten & Fearey (Messrs. Burlingham,  
Veeder and Brown), for respondent.

HOUGH, C. J.:

The Italian S. S. "Napoli" sailed from New York for Genoa in June, 1918. At Gibraltar she became one of a convoy of cargo boats proceeding from Gibraltar to Genoa. On this trip "Napoli" collided with the British S. S. "Lamington"; which was one of another convoy of similar vessels then proceeding from Genoa to Gibraltar. About an hour after collision, and as a result thereof, Napoli sank; both ship and cargo became a total loss.

Part of Napoli's cargo was covered by what is commonly known as a "Marine policy", issued by libellant, Queen Company; and the same cargo was further covered by what is called a "War-risk" policy issued by respondent, Globe Company.

244 Loss being admitted—but each underwriter asserting that the other should pay, each by agreement and without prejudice, paid the insured half the amount due by someone; whereupon libellant (having succeeded in the familiar manner to the rights of cargo owner) brought this suit against the "War-risk" underwriter seeking to recover as of right the amount not already advanced by respondent.

Thus this question is presented, viz: under the circumstances in evidence, was the collision between Napoli and Lamington (which admittedly produced the loss of the insured cargo) due to a "Marine risk" or "War-risk."

The libel asserts both convoys were "directed by competent naval authorities"; the west-bound convoy was ordered to make certain designated courses; all vessels were required to travel in specified formation without lights, and to obey the orders of the conveying warships in the event of known proximity of German submarines; finally the duly constituted naval authorities so laid out the courses of the convoys that "they would meet in the course of their navigation". It is then alleged in substance that as the result of these convoy regulations, the collision occurred; in that shortly before midnight of July 4-5, the convoys met "approximately head on", producing a situation of such danger, difficulty and confusion that although both Lamington and Napoli "acted with all due care", collision occurred.

This is in effect an averment that collision was proximately caused by the method of conveying.

245 It is also alleged that the east-bound convoy "some or all the vessels (therein) carried munitions and/or contraband, and all



of them were liable to condemnation or destruction under the German law."

This is an endeavor by the pleader to assert that Napoli's going in convoy was (in the language of the policy in suit) "an act of Kings, &c., authorized by and in prosecution of hostilities."

Before considering the words of contract, the facts must be stated, so far as the meagre record permits their ascertainment.

The parties have united in seeking information about the collision; but the naval authorities of Great Britain and Italy refused assistance; wherefore the evidence consists of logs and statements from such of the escorting vessels as were of the United States Navy; affidavits or depositions from officers and men of Napoli given in legal or administrative proceedings, and opinions rendered therein in Italy and England; together with excerpts from the manifest of the Napoli.

Unsatisfactory as this is, there is, I think, enough to enable the Court to treat the legal questions, without feeling that were the facts really known, there might appear some error or fault in ship management that would dispose of the case; before reaching the problem of interpreting policy clauses in question.

246 Without resting decision even partly on the truth that libellant must bear the burden of proof. I find on all the evidence, nothing to show that Napoli or any other merchantman was compelled to go in convoy. For all that appears she was free to sail alone. But it is an inference easily made from what is proven, that she would have run far greater danger by avoiding convoy than by joining one; she sought the protection of a convoy, and so did all other well advised vessels of no greater speed than Napoli possessed (twelve knots).

If a vessel took convoy she was obliged to conform to instructions as to courses and management given by "competent naval authorities," and such instructions came from three sources: (1) general orders at Genoa or Gibraltar as the case might be, emanating from shore or port authority or perhaps the Admiral on the station, (2) the Senior Naval Officer in escort, who enforced the general orders and exercised his own judgment in departing from them in detail if necessary; and who might or might not be (3) the Commodore of the convoy, who carried his flag on a merchantman, and sought to keep the other cargo-boats in rank, at proper speed, &c. If, however, this Commodore ranked the Commanders of all the escorting vessels, he was also the Senior Naval Officer present, and functioned as such.

Of the two convoys in question, the westbound was in charge of a Rear Admiral of the Italian Navy, on a merchantman, the  
247 Italian S. S. Ansaldo III, who was both senior officer present and convoy Commodore: the escort consisting of small vessels from British, Italian and American navies. The eastbound convoy had for Commodore a Commander in Italian Navy on board the Napoli; the Senior Naval officer was a Captain in the British Navy, and the escorting vessels were of the same diverse nationalities as were those of the other convoy.



It is not, however, true, that either convoy or both were obliged by orders given on or before departure to pursue fixed courses for the entire contemplated trip. The westbound vessels were merely ordered after leaving a buoy outside Genoa harbor to take "courses according to the signal of the Commodore," on Ansaldo III; while the eastbound fleet was given definite courses until such time as they should reach 42.58 N. and 7.50 E., from which position, called "Genoa Rendezvous" they were to proceed "according to instructions from Genoa," which so far as appears were never given. This point is about 70 miles from Genoa, and the place of collision was, according to the repeated statements of Napoli's master 43 N, 7.58 E. In other words the Napoli had proceeded beyond the limit of courses antecedently laid down, and was presumably taking whatever direction was ordered by Captain Ryan, R. N. as Senior Naval officer present. This is even more true if the Lamington's calculation of position be accepted—43.8 N., 7.46 E. It is therefore not true that the convoys met by reason of pursuing courses pre-

248 determined for them at the places of departure.

By no formal written order were the vessels of either convoy spaced apart or given distances; nor is any written order produced directing them to navigate without lights.

It is, however, inferrable from the evidence, and is matter of common knowledge, that they were expected and required (warships and merchant vessels alike) to keep their lights screened, but ready for instant exhibition. The arrangement of vessels in convoy formation, while not formally prescribed in writing, was a matter evidently so well known as to be left to the senior naval officer; the convoy was arranged according to a system obviously accepted and understood by all officers interested.

It is not easy to ascertain with exactness what were the distances between the vessels in each tier or rank, or the distances between the several tiers. Each convoy consisted of three tiers, but not of the same number of vessels in each tier. The Lamington's or westbound convoy had eight vessels in the front tier, either five or six in the second and three in the third.

The Napoli's or eastbound convoy had apparently seven vessels in the first tier and a smaller number in the second and third. Some of the eastbound vessels had left that convoy before collision; bound for Marseilles.

Libellant's Exhibit 2 (Document 10) is an endeavor to depict the position of Napoli, Lamington and certain other vessels at and shortly before collision occurred. That exhibit seems to me

249 inaccurate, in that it shows Napoli as in a front rank or tier of six only; she was the middle ship of seven. The vessel immediately behind her was the Swedish S. S. Otto Sverdrup.

Document 10, again, cannot be reconciled with the order issued by the Italian Admiral in charge at Genoa for the arrangement of vessels in the westbound convoy. If that order was complied with the flagship Ansaldo III was the fourth vessel in the first tier of eight (counting from port to starboard) and the vessel immediately behind her in the second tier was the Plymouth and not the Lam-



ington as shown in Document 10. In fact there is no Lamington named in the list of westbound vessels, but the "Harington," which is taken to be the Lamington, was in the second tier, and behind the third front tier vessel. That the vessel called the "Harington" was the Lamington is conclusively shown by an entry in log of Yankton;—the American naval vessel with westbound fleet. On the morning of July 5th Yankton signalled to vessel "U. B." Were you injured last night and are you able to proceed? U. B., according to Genoa orders above referred to, was the "Harington;" and U. B.'s answer was, "Consider it inadvisable to proceed due to damages sustained last night in collision with unknown steamer." If Lamington had been directly behind Ansaldo III she would have been vessel "V. B.," which was not injured, and was American S. S.

250 Plymouth, to which the Italian Admiral transferred his flag. I think it fairly shown that vessels in the same tier were expected to remain (from beam to beam) not over 500 yards apart, probably somewhat less; while the distance between tiers (or fore and aft) was about 600 yards except when the convoy was "zig-zagging," in which case the distance was lengthened to about 800; but these distances are approximate only, and the figures given are for the eastbound vessels; distances for those westbound were slightly shorter.

The log of Castine, the American naval vessel escorting the eastbound convoy on the port flank, shows that that convoy had great difficulty in maintaining distances fore and aft, and the Otto Sverdrup was an especially persistent straggler. But as midnight of July 4th approached the log shows that the convoy was in no worse plight than "poor formation." It can be said with certainly, however, that as the two convoys approached each other the eastbound fleet presented a front from the port to the starboard escort (escorts endeavored to maintain position of 400 yards off the flanks) of something less than two nautical miles; and the westbound convoy something over that distance.

By all the evidence the weather was "hazy," yet the testimony is unanimous that the loom of vessels in the westbound fleet was seen by Napoli's observers at a distance of a thousand meters; and the Commanders of Castine and Yankton think the range of visibility three-quarters of a mile or a little less; and from the Castine's deck (some 400 yards off the port flank of the eastbound convoy) it is agreed that her observers could see three vessels, in the front  
251 tier of her convoy. It is plain that the whole range of visibility at and before the time of collision was for a moonless night unusually high.

The fleets met by computation (Document 10) at an angle between their courses of about 30 degrees; yet the testimony from Napoli (evidently adopted by the pleader for libellant) is uniform, that the westbound vessels when seen seemed almost end on; and think that navigation was on that theory of direction.

There was no fixed or inflexible rate of speed for either convoy. The westbound ships were out of Genoa harbor about 10.50 A. M., July 4th, and about an hour later the Commodore and Senior Naval



officer on Ansaldo III signaled to Yankton "Can you tell me the exact speed of the convoy as we have no log," to which the Yankton replied "Speed about 7.3 knots." This or a slightly greater speed was evidently maintained, because any material variations therefrom would have been noted in the log in evidence. The eastbound fleet was proceeding at about the same rate—on this point there is ample evidence. It follows that the vessels were approaching at between 14 and 15 knots an hour.

At approximately 7 P. M. of July 4th a vessel in the westbound convoy was injured by a submarine at a point about N. 50° E. (true) of the place of collision, and rather less than 30 knots distant therefrom. Thereupon the westbound escort vessels set out in search of the attacking submarine; and for that reason the navigation records in evidence are more meagre in respect of the  
252 westbound than of the eastbound fleet. It is plain that the westbound convoy immediately began to zig-zag; it is not plain whether when the convoys sighted each other the original course had been made good, but I take the opinion (it is no more) of Lieut. Burns of the Yankton, who was "reasonably sure that (his) convoy was off the course laid down before the attack" at the time of sighting the other fleet. But it is quite impossible to say whether it was off course to the south or north.

The fleets sighted each other almost exactly in the middle of the passage between northeastern Corsica and France, a stretch of water between ninety-five and a hundred miles wide. As soon as the loom of the other ships appeared, both fleets turned on their navigating lights so that I find the pre-collision situation was this:—upwards of 35 vessels with their accompanying escorts, divided into two approximately equal fleets, were approaching each other nearly end on, at the rate of over 14 knots an hour, when the distance between the leading tiers of each fleet was not over three-quarters of a nautical mile.

Of this situation at least the first tiers of both convoys were instantly aware. Each thought the other vessels were approaching almost end on; in point of fact they were not so approaching; but their navigation must be judged by what the navigators believed at the time.

It is to me plain beyond argument that under the apparent circumstances the duty of every navigator was to slow down to steerage way and stick as nearly to his course as possible in the  
253 hope that the vessels of each fleet would pass through the lanes between the fore and aft lines of the other fleet.

Most of the steamers must have done this, for otherwise it is inconceivable that no more than six vessels out of so many got into collision. In respect of the collisions that did occur that between the Albatross (westbound) and Hjelfjord (eastbound) was very reasonably attributed by the Italian investigating Commission to the fact that the Albatross never turned on her lights. That between Ansaldo III and the Sverdrup was found by the same Commission to have been contributed to, if not caused, by the failure



of Ansaldo III "to stop by reversing the engines and giving the three regulation whistles to warn the ships in the vicinity." Thus presumably competent investigating authority has attributed fault in navigation to certain of the other vessels colliding at the same time as did Napoli and Lamington.

The convoys approached each other so that if courses and speeds were maintained there would have been a collision between Napoli and Ansaldo III. This was avoided by the vessels passing each other port to port, though how near does not appear. This is the natural result of what by his statements before the Commission in Genoa and before the English Court, the Captain of Napoli did, to wit, port his helm. But he did not, by his own statement, endeavor to straighten up and keep on down the lane, which he must have known to exist. On the contrary he either kept going to port, or indulged in what he admitted "might be called the serpentine,"

and stopped. In my opinion he stopped directly in the path  
254 of the Lamington, which vessel I am convinced (differing from Document 10) was travelling (if in reasonably good formation) from 500 to 800 yards on the port quarter of Ansaldo III. In no other way can the collision be accounted for with so broad an angle between the colliding vessels as is admitted all around.

Meanwhile Lamington had continued to proceed at at least six knots until she saw the Napoli, or the latter's lights, so near at hand that collision was inevitable.

It is my opinion, and I find from the material furnished, that both the vessels here involved navigated faultily; the Napoli in that having ported to such an extent that she ought to have known she was getting in the way of the next fore and aft convoy line, stopped and (as it seems to me) invited collision with any vessel in that line that came up out of the night; while the Lamington was at fault for maintaining so great a speed that she could not possibly take off her way before colliding with whatever she could clearly make out ahead. It may be noted that the speed of the Lamington is not only admitted, but would necessarily be found from consideration of the violent blow she struck the much larger and more powerful Napoli.

I have felt obliged to make these criticisms on the navigation of the two vessels, although not unmindful of the Italian and English findings.

The Commission felt

255 "it their duty to point out the circumstances under which the manœuvres in question had to be executed, and are of opinion that the anxiety of the Commanders must have been very great because, besides having to avoid the steamers ahead, they had also to seek to avoid being struck by those astern. Moreover the sudden appearing of so many lights, the noise of so many sound signals directing the manœuvres, must necessarily have generated a confusion which was entirely to the disadvantage of the necessary



calm which every Commander had to preserve in order to avoid collisions which appeared impending from all sides."

This is undoubtedly true, but after all, amounts to no more than saying that navigation at the time and place was attended with great difficulties. The English trial (of a suit by owners of cargo on Napoli vs. owners of Lamington) resulted in a judgment by Hill, J. finding no fault in Lamington (with which I do not agree) but declaring concerning the whole situation that

"it seems to me to be quite clear that this is one of those cases in which two convoys unlighted, suddenly became aware of one another's presence at a very close distance, became greatly confused in their formation and in the efforts they made to avoid one another, without any fault on the part of anybody the collision took place."

256 The force of this is thoroughly recognized, but I strongly incline to the opinion notwithstanding that such excusatory remarks as this amount to a refusal to find fault whenever the circumstances are sufficiently alarming to furnish some excuse for losing one's head.

Result is that I consider this collision as having resulted not only immediately but, in the legal sense, proximately from poor navigation on the part of both colliding vessels.

Yet, though entertaining the foregoing opinion, I recognize the force of an argument contra, which may be thus stated: Allowing for Napoli's slowing and stopping and for Lamington's ultimate reversal full speed astern, there could not have been more than two thousand yards between Napoli and Lamington when the navigating lights were flashed on, and the time between that moment and collision could not have been more than five minutes and quite probably less.

It may be argued that in such a situation, assuredly one of terror and confusion, faults of navigation such as I think occurred may be regarded as in extremis, and the cardinal, and in a legal sense proximate cause of collision be found in whatever train of circumstances or whatever human direction, or lack of it, produced such a situation of danger, confusion and terror.

In my opinion the causa causans of all the collisions of that night was the total disregard by each convoy of the other. Instead of courses and distances having been laid down (as alleged in the libel) which were certain to produce a meeting of convoys,

257 I am persuaded that neither convoy paid any attention to the approach or proximity of the other, and there was no central or controlling authority which guided, could guide or was expected to guide the movements of both convoys in relation to each other.

It is not believed that the torpedoing of a vessel in the westbound convoy five hours before meeting the eastbound fleet affected this matter at all, or, if it did, it was pure ill luck. For all that the naval or navigating authorities did or expected to do (so far as this



record shows) it was chance, and no more, whether the senior naval officers of the respective fleets did or did not steer courses that would intersect with those of the other convoy. And with each officer navigating (so far as shown) absolutely for himself, it was quite natural that each would steer for the middle of the passageway between Corsica and France, and that is exactly where they met. The one fairly certain result of torpedoing Merida (vessel T. B. west-bound) was to slow up the convoy so far as getting toward Gibraltar was concerned. It is rather less than thirty nautical miles from the scene of Merida's mischance to that of collision, and it required five hours to make that distance. If the speed was anything over six miles (and estimates vary from 7.3 to 8.5), there was a great deal of "zig-zagging" done; but all without any reference to the other convoy. It follows that in my opinion a certain and important navigator's fault lay with the senior naval officers of both convoys in failing to take any steps to prevent just such a meeting as did occur.

But this latter fault (assuming it now to exist) raises a question which is one of law, viz: whether such careless navigation on the part of the conveyors produced a risk for which protection must be sought under the policy of the libellant rather than that of respondent.

It remains to consider the facts with regard to the cargo of the Napoli. It is agreed that the major portion of her large cargo could fairly be described as general; but in Mr. Hann's affidavit libellants exhibit a list of cargo articles which they declare to have been "intended for use by the Italian Government in prosecution of war." The list is considerable in itself, but insignificant as compared with the lading of a vessel of Napoli's size. It is my opinion that this list contains certainly one and perhaps two articles which may be called munitions of war, to wit, certain tubes for "Italian 80 ft. subchasers," and "Artillery case heading press." The rest of the list is beyond question contraband, and more than conditional contraband too, but that is all. But the goods are in my opinion no more closely allied to warlike operations or to the waging of war than was the asbestos which constituted the portion of the cargo insured by both parties to this litigation.

In the light of what is now history, it seems to me rather absurd to ground argument concerning the presence or absence of war-risk solely upon the nature of even an entire cargo, not to speak of the nature of scattered and numerically insignificant articles thereof. This because the war-risk was the same, no matter what the character of cargo. It is history that in the summer of 1918 the sea power of Germany outside of the North Sea was represented solely by submarines whose object was to destroy commerce, and that meant to destroy ships, the nature of cargo was a matter of no consequence.

Thus I think consideration of the law is reached.

Some points are admitted all around—(1) that declaring liability upon such a policy as that in suit is (after ascertaining the sequence of happenings) a quest for proximate cause in the legal sense of that phrase; and (2) that where a policy speaks of the "consequences"



of an enumerated list of happenings, the word refers to the totality of causes and not to their sequence.

For the first proposition sufficient authority in this Court is to be found in *The Canadia* (Muller vs. Globe, 246 Fed., 759); and the second has not been doubted since the *Ionides* case, 14 C. B. (N. S.) 274 (290).

It is now necessary to consider the exact phasing of 'he policy in suit, for whatever may be accepted general principles, there can be no liability except under one particular policy.

The history of the f. c. and s. clause and the rise and development of the war-risk clause are, however interesting, only important as casting light on the habits of mind or methods of reasoning pursued by courts whose authority is generally recognized and who spoke before the great development of war-risk which has marked the period since 1914. This history and the standard or commonly

used forms of marine and war-risk clauses may be found  
260 sufficiently stated in *Gow. Mar. Ins.*, pp. 114-115, 360; and

*Gow. Sea Ins.*, pp. 84-85. It is observable that the forms of words used by the American underwriters both for marine and sea perils in this case are quite different from the forms which in the opinion of the learned author referred to had become common in English and continental marine circles prior to 1914.

It may also be noted that the clause sued on in *The Canadia* (supra) was quite peculiar, and I now note as my opinion that that decision is of no value in this litigation except on the point of proximate cause, because decision was based on the finding of fact that the "Canadia and her cargo were seized, arrested and detained within the meaning of the policy" there at bar. No such contention is here made.

Having thus laid aside *The Canadia*, supra, it is admitted that this is a pioneer action in the courts of this country upon a war-risk policy; but that there is in Great Britain a long line of cases arising upon the forms of war-risk there lately used. These British forms were so well known that the exact wording does not always appear in the reported cases; but they were obviously so uniform that it may reasonably be assumed that all in substance resemble the phrases of *The Matiana* and *The Petersham* (A. C. [1921] 99). There the f. c. and s. clause warranted free "from all consequences of hostilities and/or warlike operations whether before or after declaration of war." And the war-risk clause covered "all consequences of hostilities and warlike operations by or against the King's  
enemies before or after declaration of war."

261 The f. c. and s. clause in libellant's marine policy is as follows:

"Warranted by the assured free from loss of expense arising from capture, seizure, restraint, detention or destruction and the consequences thereof, or of any attempt thereat, and also from all consequences of riots, insurrection, hostilities or warlike operations, whether before or after declaration of war, and whether lawful or unlawful, and whether by the act of any belligerent nations, or by



governments of seceding or revolting States, or by unauthorized or lawless persons therein, or otherwise."

And the assumption clause in respondent's war-risk policy is as follows:

"It is agreed that this insurance covers only the risk of capture, seizure, or destruction, or damage, by men-of-war, by letters of mark, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations."

The war-risk clause ought logically to be the supplement of the f. c. and s. clause in the marine policy. This logical result is reached in the English cases so far as they reveal the exact language of the several policies. In the present instance it seems to me entirely plain that whereas the marine underwriter excluded in terms  
262 "all consequences of hostilities or warlike operations," the war-risk underwriter did not assume "all consequences." His undertaking is not the supplement of the marine policy but (for the purposes of present litigation) he only assumed liability for "acts of Kings authorized by and in prosecution of hostilities." This is very far from being the equivalent of "all consequences of hostilities or warlike operations."

But I shall not dwell upon this difference; it is preferred to treat the case as one of principle, and therefore I shall speak as though the respondent had insured (as the defendants in the reported British cases did) against "all consequences of hostilities or warlike operations."

The question may be reduced to its lowest terms as follows: Admittedly the loss flowed directly from the collision between Napoli and Lamington. Therefore the question is this: was that collision a consequence of hostilities or warlike operations?

On the reason of the matter I have already stated my view of the argument based upon the nature of the Napoli's cargo. But further, upon authority, it is the nature of the operation, not the character of the cargo, which is the material thing determining the query whether the vessel is engaged in an act of hostilities or in a warlike operation (The Larchgrove, 36 Times L. R., 108). I have not overlooked Hindustan, etc. Co. vs. Admiralty, 37 Times L. R., 856; Peninsular vs. Commonwealth, 9 Lloyds List, 208; and Atlantic, etc. Co. vs. Director, 38 Times L. R., 160. Whether these first instance cases are all reconcilable with each other or with ruling authority is not a matter of importance;  
263 it suffices to note that none of them is in terms applicable to the facts at bar.

The main contention of libellant may be I think thus formulated: There was in substance compulsion upon the Napoli and other vessels to sail in convoy and not otherwise; it makes no difference whether the compulsion arose from the folly and danger of going alone or from positive governmental direction—it was compulsion



just the same; she and the other vessels did sail in convoy and were therefore entirely under the direction and guidance of naval authorities; in convoy the vessels did sail without lights; and, to sum the matter up, they were from start to disastrous finish conducted, controlled, ordered and in effect navigated (in the larger sense) by the representatives of their own or another sovereign power.

To this major premise may be added the following subordinate proposition: Napoli and Lamington did display ordinary care and skill on the part of their respective navigators, but (if this be not absolutely true) such errors of navigation as were committed were faults in extremis, and therefore the collision was proximately caused either (1) by the necessity of going in convoy under admitted conditions or (2) by the personal fault of the senior naval officers of both convoys and/or by the shore authorities at each end of the Genoa-Gibraltar line in taking no steps to prevent the meeting of convoys sailing in opposite directions exactly as these two convoys did meet.

264 It would be a professional pleasure to feel at liberty to treat both these questions from what I regard as the standpoint of reason; but I do not think that pleasure can be accorded. The question is not one of morals, nor of public policy; it is no more than the interpretation of certain forms of words, which are not sacred, which have varied and may be changed at any time to suit the apparent necessities of commercial profit. The important thing is to secure uniformity of view in a commercial world which now embraces and long has included more than one continent and more than one ocean. I shall therefore, briefly state my own view and decide this case on what I conceive to be authority.

The baldest statement of libellant's position is to say that the act of sailing in convoy without lights is in and of itself a warlike operation; and from this flows the conclusion that such marine disasters as may reasonably be expected to result from convoy dangers are themselves the result of warlike operations.

My own view in this matter is that of Bailhache, J., expressed in *The Petersham* (Britain, etc. Co. vs. *The King* (1919) 1 K. B., 575 (580); and *The Matiana* (British, etc. Co. vs. *Green* (1919) 1 K. B., 632 (636), viz:

"However peaceful the immediate business upon which a ship is engaged—if she is sailing as one of a convoy she is engaged, in my opinion, in a warlike operation. The assembling, presence,  
265 protection and movements of the King's ships protecting the convoy are a warlike operation, and both convoyed and convoying ships are taking part in it, and that character attaches to the whole flotilla and covers the whole operation".

And the learned Judge continues:

"Suppose a dangerous route from which lights had been removed was prescribed (by the authorities) to deceive the enemy; and a ship taking such a route, without negligence runs ashore and is lost as the direct result of the removal of the lights;—would such a loss



be covered by the words "warlike operation"? I think it would, but not because the ship was carrying out a warlike operation. The warlike operation would be the removal of the lights."

This I think to be the large and commonsense view of the situation. Quite possibly there was a time when war was no more than the *ultima ratio regum*; and while Kings wrangled traffic might continue subject to the right of search and most oppressive Stowell-made rules as to contraband; but still it was essentially peace-time traffic, peacefully conducted in the main.

But when war became what it was between 1914-1918, it is now history that commerce existed only as an adjunct to war and for the purpose of creating and maintaining armed forces to insure the economic defeat of the enemy.

266 The Napoli was taking a cargo from America to Italy, and even Courts may take cognizance of the fact that in June, 1918, no such cargo was a possibility that did not in the opinion of governmental representatives from at least three Governments (British, Italian and American) directly assist in the task of defeating Germany. In a large sense the very act of sailing was a consequence of hostilities. In short, almost every act of the warring countries after the home-staying population was fed, clothed and sheltered, was but a manifestation of war. For these reasons I agree in principle with Bailhache, J., and particularly sympathize with the defiance flung by him at the reasoning of *The Ionides* case, *supra*, indicated in the last of the above quotations.

But the spirit of *The Ionides* decision triumphed when the *Matiana* and *Petersham* cases had gone through the Court of Appeals (1919. 1 K. B., 670) and received final treatment in the House of Lords (1921. 1 A. C., 99).

The majority opinions start with the proposition that collision, strandings and the like are normally marine perils; they are normally covered by the ordinary marine policy;—the turn of mind evidenced by insistence upon this commonplace is manifest. It is the same habit of thought that dominates all the early cases, and especially the *Ionides* decision, to wit, that that precaution of war, or indeed that warlike operation which no more than heightens the old well known pre-existent perils of sea navigation does not change in kind such peril.

267 The cases above referred to and the citations therein may furnish many illustrations of this kind of reasoning, which has been accepted to the full by the English Courts. My personal opinion is that the doctrine now established by authority is best expressed by Atkin, L. J., in the Court of Appeals, and Lord Wrenbury in the House of Lords in *The Petersham* and *Matiana* decisions.

It is thus I think settled by authority that sailing with a general cargo, however contraband (for municipally speaking there is nothing unlawful about contraband) cannot be a warlike operation; the mere joining of a convoy, though compulsory is not a warlike operation; the management or mis-management of a convoy is likewise not a warlike operation. And indeed operations only become



warlike when they are designedly offensive (*McGregor vs. Martin*, 34 Times L. R., 604) or where the injury causing loss is proximately due to an enemy effort. Thus in the present case, if the submarine that sank the *Merida* thirty miles from collision had chased the westbound convoy, while exercising ordinary navigational skill, into a collision or stranding, the case would have fallen under war-risk.

But where war and its necessities had no more to do with the resultant collision, stranding or foundering than to multiply pre-existing dangers and known dangers at that—the foundation is not laid for discharging the marine underwriter and resting upon the war-risk policy.

The case of *The Matiana* is a far more aggravated instance  
268 of directed dangerous navigation than is the present one.

Here, in my judgment, there was a singular and inexcusable lack of care in indicating any lanes of traffic to the opposing streams of convoy travel between Genoa and Gibraltar; and these convoys were moving almost like ferries. But in *The Matiana* there were orders to run through dangerous waters, amid treacherous currents, and without the advantage of a lighthouse. Yet the *Matiana* war-risk underwriters were discharged.

Result is that :

1st. It is my personal opinion on this record that, acknowledging the danger in which these two convoys found themselves at midnight of July 4, 1918, the navigators of both *Napoli* and *Lamington* failed in their ship-management to exercise the ordinary care and skill of their calling. Therefore such negligence was the proximate cause of collision and the loss must fall upon the marine underwriters.

2d. But passing this first holding, and admitting that whatever faults were committed by the colliding vessels were errors in extremis, it must be held under authority, to which for business purposes the Courts of the United States should conform, that the collision in question was not proximately caused by any act of hostility or by the consequences thereof ; because

3d. The act of joining a convoy, the act of sailing therein without lights, and the act of steering courses directed by naval au-  
269 thority are not, whether separately or conjointly considered, to be regarded as a warlike operation.

For these reasons the libel is dismissed, without costs.

March 11, 1922.

CHAS. M. HOUGH,  
C. J.



270

*Final Decree.*

At a Stated Term of the United States District Court for the Southern District of New York Held in the Court Rooms, in the City of New York, on the 20th Day of March, 1922.

Present: Honorable Charles M. Hough, Circuit Judge.

QUEEN INSURANCE COMPANY OF AMERICA, Libellant,  
against

GLOBE & RUTGERS FIRE INSURANCE Co., Respondent.

This cause having been heard, and the Court having decided that the collision set forth in the libel was caused not by hostilities or warlike operations or consequences thereof, but by negligence, and that the loss must fall upon the marine underwriters,

Now, on motion of Burlingham, Veeder, Masten & Fearey, Proctors for the Respondent herein, it is

271 Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed without costs.

C. M. HOUGH.

Notice of settlement waived.

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*

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*Notice of Appeal.*

United States District Court, Southern District of New York.

THE QUEEN INSURANCE COMPANY OF AMERICA, Libellant,  
against

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent.

SMS:

Please take notice that the libellant, The Queen Insurance Company of America, hereby appeals to the Circuit Court of Appeals of the United States for the Second Circuit from the final decree dismissing the libel herein entered in the above entitled action on the 20th day of March, 1922, and from each and every part of said decree.

Dated, New York, April 5, 1922.

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*

64 Wall Street, New York City.

273 To Messrs. Burlingham, Veeder, Masten & Fearey, Proctors for Respondent, 27 William Street, New York City.

To Alexander Gilchrist, Jr., Esq., Clerk of the District Court of the United States, Post Office Building, Borough of Manhattan, New York City.



*Assignment of Errors.*

United States District Court, Southern District of New York.

QUEEN INSURANCE COMPANY OF AMERICA, Libellant,  
against

GLOBE & RUTGERS FIRE INSURANCE CO., Respondent.

The libellant hereby assigns error in the decision and final decree of the District Court in this case as follows:

1. In finding that the loss of the "Napoli" was due to a marine peril and not to a war peril within the meaning of the policies of insurance annexed to the libel.

2. In finding that the ships involved were not required to travel in convoy.

3. In finding that at the time of the collision the Eastbound convoy had passed the Genoa Rendezvous.

275 4. In failing to find that the Westbound convoy was off its course to the southward at the time of the collision as a result of the submarine attack.

5. In finding that the "Lamington" and "Napoli" were guilty of faults of navigation.

6. In refusing to find that the faults of navigation of the "Napoli" and "Lamington," if any, were errors in extremis.

7. In holding it immaterial that a portion of the cargo of the "Napoli" consisted of munitions and goods intended for the use of the Italian army and navy shipped to a base of the Italian army and navy, namely, Genoa.

8. In refusing to find that the loss of the "Napoli" was proximately caused by the courses and other instructions prescribed by the duly constituted naval authorities authorized by and in prosecution of hostilities between belligerent nations.

9. In finding that "The act of joining a convoy, the act of sailing herein without lights, and the act of steering courses directed by naval authorities are not, whether separately or conjointly considered, to be regarded as a warlike operation."

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*

No. 64 Wall Street, Borough of Manhattan, New York City.



276

*Stipulation.*

United States District Court, Southern District of New York.

THE QUEEN INSURANCE COMPANY OF AMERICA, Libellant-Appellant,

vs.

GLOBE & RUTGERS FIRE INSURANCE Co., Respondent-Appellee.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, April 20, 1922.

HARRINGTON, BIGHAM & ENGLAR,  
*Proctors for Libellant.*  
 BURLINGHAM, VEEDER, MASTEN &  
 FEAREY,  
*Proctors for Respondent.*

277

*Clerk's Certificate.*

UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

THE QUEEN INSURANCE COMPANY OF AMERICA,  
 Libellant-Appellant,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY,  
 Respondent-Appellee.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 20th day of April, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

[SEAL.]

ALEX. GILCHRIST, JR.,  
*Clerk.*



United States Circuit Court of Appeals for the Second Circuit.

THE QUEEN INSURANCE COMPANY OF AMERICA,  
Libellant-Appellant,

against

GLOBE & RUTGERS FIRE INSURANCE COMPANY,  
Respondent-Appellee.

Before Rogers, Manton, and Mayer, Circuit Judges.

Appeal from the District Court for the Southern District  
of New York.

The libel was filed by the Queens Insurance Company, appellant, against The Globe & Rutgers Fire Insurance Company, appellee. From a decree dismissing the libel, libellant appeals.

It brought this suit for the loss of a cargo shipped on the Italian "S. S. Napoli". She was one of a convoy of vessels proceeding from Gibraltar to Genoa. She collided with the "S. S. Lamington", one of another convoy of vessels proceeding from Genoa to Gibraltar. There were policies of insurance, one for maritime and one for war risk issued on this cargo. Appellant issued and delivered the marine policy and the appellee issued and delivered the war risk policy. When the loss took place, the underwriters, by agreement and without prejudice to the rights which each might have, paid the insured one-half of the amount to which he was entitled. The appellant, because of its payment and by assignment, succeeded to the rights of the cargo owner and brought this suit against the war risk underwriter, and seeks to recover the amount not already paid by the appellee. The Napoli was an Italian steamer of five thousand seven hundred and nine tons burden and on June 30, 1918, was bound from New York to Genoa, having left Gibraltar in a convoy of about twenty vessels. This convoy was arranged in three tiers. The Napoli was the middle ship of the second tier. The distance between the ships, fore and aft, or on either beam, is not stated. This convoy was protected by six small vessels of the British, Italian and American navies. The navigation of the convoy was entrusted to a Commodore of the Italian Navy who was aboard the Napoli, but he was subject to the command of a captain of the British navy as the senior naval officer present. Before leaving Gibraltar the vessels were routed through designated positions until they reached 42° 58' N. and 5° 50' E., the Genoa rendezvous, from which position they were to proceed from Genoa after instructions received there. Because of favorable weather, it appears that this convoy was twenty-four hours ahead of its schedule on July 4, 1918, at 8 P. M. On the morning of that day, a



Gibraltar. The commander ship was the fourth vessel of the first tier of eight vessels and was followed by a second tier of which the Lamington, a British vessel, was on her port-side. The distance between the columns is given as eight hundred yards while zig-zagging and six hundred yards when not. The ships in the columns were about four hundred yards apart. This convoy was commanded by the Rear-Admiral of the Italian Navy. His authority extended over the five escorting naval vessels, which vessels were operating on the flanks and astern as did the escorting vessels of the eastbound convoy. The courses taken by these vessels were according to the signal of the Commander in charge. This convoy proceeded until about 7 P. M. on July 4, when one of the cargo vessels was torpedoed. The fleet immediately began to zigzag, but the base course was not changed until about 8:30 P. M., when it was set at  $247^{\circ}$  true in accordance with the directions given for the attack. Later, at 10:30 P. M. the course was changed to  $261^{\circ}$  true and this was maintained until the convoys met. There appears to be no national or international authority which required the vessels to sail in convoy, but this custom at the time was universally followed. The instructions given to the vessels in convoy and through the officer in charge came from the shore or station thereto at either end of the Gibraltar-Genoa line. The senior naval officer in charge enforced these general orders except he exercised his own judgment in depart-

281 ing from them in such details as he deemed necessary. The convoys met mid-way between northeastern Corsica and France while in a passage about one hundred miles wide. At the time their position was  $43^{\circ}$  N.  $7^{\circ} 58'$  E. The eastbound convoy was N. E. true and the westbound convoy was  $261^{\circ}$  or W.  $\frac{3}{4}$  S. There were about thirty-five vessels with accompanying escorts and were thus divided into two fleets with convoys going about the same speed, 7.3 knots per hour. Each leading tier picked up the loom of the vessels at a distance of about three-fourths of a mile. Each thought the other was on an opposite course. They immediately turned on their navigating lights. Most of the vessels slowed to steerageway and held their courses as closely as possible and passed down through the lanes between the fore and aft columns of ships and thus avoided the collision. The Napoli, porting, did not straighten up on her course, but stopped directly in the path of the Lamington, which was travelling some eight hundred yards on the port quarter of the Commander's ship, the Ansaldo. The Lamington proceeded at a speed of about six knots until she saw the Napoli or her lights too close to avoid collision. The Lamington struck the Napoli on the port side almost at right angles, sinking her.

The evidence adduced on the trial consisted of the log and statements from members of the escorting vessels who were in the United States Navy. It is explained that the parties were unable to secure information from the authorities of the British and Italian Admiralties. The record does contain a transcript of sailing orders, 282 a war diary, a log and a communication record of the United States ship Castine, and similar records of the United States



ship Yankton; also documents, relating to the Italian Court of Inquiry showing the report of the sea voyage before the Genoa Civil Tribunal by the master and certain members of the crew of the Napoli and the findings of the Commission of Inquiry of the Italian Ministry of Marine and a letter from the Royal Italian Embassy under date of June 2, 1920, which denied information because of the confidential nature of the report to the proctors for the libellant. Other documents in the record are letters from the Secretary of the British Admiralty denying information sought from it by the proctors and depositions of the master and second officer of the Napoli; depositions of the captains of the United States ships form part of the record, as does a memorandum of facts by an ensign of the Yankton. It appears by the affidavit of Charles Hann, Jr., that the cargo on the Napoli consisted of a varied commercial cargo and was intended for use by the Italian government in the prosecution of the war. The list contains what might be considered munitions of war, namely, certain "tubes for Italian eighty foot subchasers and artillery case heading press". It was all contraband, but none of it could be considered, as it was in the cargo, fitted for warlike operations.

The marine policy issued by the appellant contained the following f. c. & s. clause:

283        "Warranted by the assured free from loss of expense arising from capture, seizure, restraint, detention or destruction and the consequences thereof or of any attempt thereat, and also from all consequences of riots, insurrections, hostilities or warlike operations, whether before or after declaration of war, and whether lawful or unlawful, and whether by the act of any belligerent nations, or by governments of seceding or revolting states, or by unauthorized or lawless persons therein, or otherwise."

Appellee's war risk policy contained this clause:

"It is agreed that this insurance covers only the risk of capture, seizure, or destruction, or damage, by men-of-war, by letters of marque, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations."

Harrington, Bigham & Englar, Esqs., Proctors for Appellant;

D. Roger Englar, O. R. Houston, Advocates;

Burlingham, Veeder, Masten & Fearey, Esqs., Proctors for Appellee;

Charles C. Burlingham, VanVechten Veeder, Ralph W. Brown, of Counsel.

284        MANTON, *Circuit Judge*:

The District Judge examined into the cause of collision and, from the testimony offered, incomplete as it is, concluded that the collision was due to faulty navigation. It was determined that the loss was not covered by the war risk policy but was covered by the marine policy and the libel was accordingly dismissed. The pro-



visions of the war risk policy assume all the consequences of hostilities or warlike operations, while the f. c. & s. clause of the marine policy excludes all consequences of hostilities or warlike operations. The appellee's war risk policy covers "acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations."

In order to impose liability under the war risk clause policy "all forms of hostilities or warlike operations of whatever kind" must consist of some form or kind of hostility or warlike operations which have proximately caused the loss. Remote consequences of hostilities cannot become a recoverable loss even if they may be said to be proximately caused by something itself ascribable as a consequence of hostilities. (*British Steamship vs. The King* (1921) 1 A. C. 99, 107, 131.)

The phrase "all consequences" has been held by the British Courts as meaning "proximate consequences only." *Ionides vs. Universal Marine Ins. Co.*, 14 C. B. (N. S.) 259 (1863); *Anderson vs. Martin* (1908) A. C. 334, 339. The loss was by a collision at sea and this prima facie is considered a marine peril. To establish  
285 a loss which falls upon the war risk underwriter, the burden must be borne by him who attempts it, and in this case, the appellant. Therefore, the question is presented, What is meant by the phrase "hostilities and warlike operations" as used in the war risk policy? There is little of aid in the authorities established by the courts of this country. The question has been considered by the British courts in a considerable number of cases. There the authorities may be summarized as holding that "hostilities" is intended to describe an actual operation, offensive or defensive, in the conduct of war, and "warlike operations" as operations in time of war. The peril must be due directly to some hostile action if it be considered a warlike risk. If the peril be a maritime risk and is but aggravated or increased by the operation relied upon as a warlike operation, then the risk is not a war risk. (*British S. S. vs. The King*, 1921, A. C. 99, 133.) There it was said:

"If the operation relied upon as a warlike operation is one which creates no new risk, but only aggravates or increases an existing maritime risk by removing something which, but for the war, would have been a safeguard against the risk, then the risk is not a war risk. But if the peril be directly due to hostile action, it is a war risk."

When one vessel of one of the convoys was attacked by a submarine, the course of the convoy was altered four points to the right, but before the convoys met and this collision ensued, it was  
286 again altered four points to the left. This latter change must be deemed to have neutralized the former. The trial judge who exhaustively examined the navigation of the vessels, concluded that the torpedoing of the vessel in the westbound convoy was five hours before the meeting of the eastbound fleet, and did not affect the question of the collision or its cause. It did slow up the convoy making progress towards its point of destination. It was about



thirty nautical miles from the scene of the torpedoing of the *Merida* to the point of collision and about five hours were consumed in making that distance. It is explained that there was zig-zagging of the vessels in making at least part of this distance. We conclude that this attack occurring, as it did, some five hours previous to the time of the collision, has no bearing upon the cause of the collision.

The appellant's contention is that this engagement was a warlike operation because (first) the vessels were sailing without lights, (second) that they were proceeding in convoy; and (third) that the *Napoli* carried a cargo intended for warlike use. Where vessels proceeded at sea during this war period, it was the custom to sail without lights. These vessels were all operated without lights. The voyages upon which each of the vessels were engaged would, if in time of peace, be treated as an ordinary maritime adventure. It would not become a warlike operation within the intention of the terms of the policy because of the fact that as a precaution against possible attack or capture, the masters of the vessels did not  
 287 show lights during the night, and even though the consequences of such action meant the concealment of the vessels and their liability to collide. It may be imprudent navigation to take this risk or it may be blameworthy from other points of view, but if it is done in obedience to lawful commands, it cannot be considered a warlike operation. The object, of course, is to avoid an enemy's attack, but no enemy was present at the time of the collision. The purposes of the adventures of the ships were peaceable. Neither vessel was doing a warlike act and those who issued the order to the navigators of the vessels did not consider their orders to be warlike even though performed in a war period. In a word, nothing of actual hostilities was present at the time of the collision. Therefore, we conclude that sailing without lights was neither a warlike operation nor was it the consequences of one. The reason for sailing without lights was due to the submarine peril, but the collision was due to faulty navigation which cannot be said to be the proximate consequences of the failure to have lights. It appears that the lights were turned on just before the collision as the convoys met. The authorities of the House of Lords of England are fully in accord in pronouncing that sailing without lights does not constitute a warlike operation. (*Petersham vs. British S. S. Co. vs. The King*—1921—1 A. C. 99.) In the *Ionides* case (14 C. B. [N. S.] 259) a cargo was placed on board the ship *Linwood* insured by a policy warranted free from all consequences of hostilities. On  
 288 her way from New Orleans to New York in 1861, her master supposing that he had passed Cape Hatteras, instead of keeping his course N., N. E. changed it to W. and went ashore about ten miles south of the Cape. Until the outbreak of the Civil War, a light had always been maintained at Cape Hatteras, but it had been extinguished by the Confederate authorities for hostile purposes. The court of first instance in England, held the proximate cause of the loss was the peril of the sea and that the underwriter was therefore liable. This decision was by the Court of Common Pleas. It later met with approval in the *Petersham* case (*supra*)



and was approved by Mr. Justice Brown when a District Judge in *Richelieu & Ohio Navigation Co. vs. Boston Marine Ins. Co.* (26 Fed., 605) and later in *The Titanic* (19 Fed., 104) by Judge Addison Brown. It involved the application of the doctrine of proximate cause. There, there was hostile action in the matter of the extinguishing of the lights by the Confederate troops and there was a maritime casualty due to stranding, both of which had bearing upon the liability under the marine policy which warranted "free from all consequences of hostilities;" and the question whether the proximate cause of the loss was a marine peril or hostilities was presented. It always becomes necessary to distinguish between causes and conditions as well as proximate and remote causation. The distinction must always be maintained between warlike operations and acts done in the course of a war. The maxim "*causa proxima non remota spectatur*" as a guide in this determination, compels the conclusion that the absence of light does not  
289 justify the claim of the appellant that that of itself constitutes a warlike operation.

Nor was it a warlike operation because the vessels were sailing in convoy. The vessels were not required to sail in convoy. It was optional with each master to become a member of the convoy. It proved to be the custom of the war period. If a vessel joined a convoy, it was required to conform to the instructions as to courses and management given by competent naval authorities. It perhaps meant an increase of the maritime risk of collision. It was sailing in company with other vessels for the sake of protection in case of danger of attack, but each vessel was still on a peaceful adventure. It was the duty of the naval officers and the escorting vessels to diligently perform their duties of convoying and protecting the ships and to defend the ships in case of attack, and not to burden them or expose them to hazard. But at the time of the collision, none of these things which it was the duty of the escorting vessels or naval officers to perform took place. There was no requirement at that time for their services. It was no command of the naval officer which brought about the collision. It has been held by a divided court in England that sailing in convoy is not a warlike operation. (*British India Steam Navigation Co. vs. Green*—1919—1 K. B. 632;—1919—2 K. B. 670;—1921—1 A. C. 99.) In the House of Lords the majority of the Lords declined to hold that the vessels convoyed become identified with the ships of war protecting them. The east and westbound convoys were each navigating for itself.

290 The course of the convoys might cross in any event and it was obviously impossible for the allied naval authorities to have laid out their courses so that they would not meet. Each sailed in complete ignorance of the other's sailing from all that the record shows, and we find nothing concerning the convoys' courses which might be said to constitute a warlike operation.

Nor can it be said that the character of the cargo made the adventure a warlike operation. The nature of the operation and not the character of the cargo or the persons in charge has been held to be the material thing to be considered in England. (Owners of S. S.



Marchtrove vs. The King, 36 Times L. R. 108.) There a vessel chartered to the United States Navy carrying munitions for the American Army in France, was held to be only a cargo ship, and in Harrison, Ltd. vs. Shipping Comptroller (1921—1 K. B. 122) the vessel stranded on her way from Salonika to Tranto having on board hospital stores for the British government and carrying a few British troops, and it was held that she was not engaged in a warlike operation since her aim was to get as peacefully and expeditiously as she could to her harbor of destination. The war risk would be the same no matter what the character of the cargo, as would the marine risk. "The dominant feature of the ship and the dominant object of the voyage must be looked at." (Harrison, Ltd. vs. Shipping Comptroller, supra.)

The District Court held that both the navigators of the Napoli and the Lamington "failed in their ship management to exercise  
291 the ordinary care and skill of their calling" and concluded that the proximate cause of the collision must therefore fall upon the marine underwriters. An examination of such testimony as has been offered leads us to agree with this conclusion. Mr. Justice Hill, who considered the case in the British courts in a suit by the owners of the cargo on the Napoli against the owner of the Lamington (the opinion is part of the record), found no fault on the part of the Lamington but said that "the immediate cause of the collision was the porting of the Napoli and nothing else". Both judges have concluded that it was the faulty navigation which brought about the collision and not a warlike operation.

We think the loss is one that must be sustained by the marine underwriter and not by the war risk underwriter, and that the decree below must be affirmed.

292

*Opinion.*

United States Circuit Court of Appeals for the Second Circuit.

THE QUEEN INSURANCE COMPANY OF AMERICA, Libellant-Appellant,  
against

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent-Appellee.

Before Rogers, Manton, and Mayer, Circuit Judges.

ROGERS, *Circuit Judge*:

*Concurring Memorandum.*

I concur in the conclusion announced in the foregoing opinion.



293

*Opinion.*

United States Circuit Court of Appeals for the Second Circuit.

THE QUEEN INSURANCE COMPANY OF AMERICA, Libellant-Appellant,  
against

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent-Appellee.

Before Rogers, Manton, and Mayer, Circuit Judges.

MAYER, *Circuit Judge*, concurring:

The District Court was of opinion that the collision resulted proximately "from poor navigation on the part of both vessels". It seems to me that neither vessel was legally at fault. If we assume that the District Court was right in ascribing fault to each vessel, yet such fault must be regarded as having been committed in extremis in a situation so unexpected, confusing and exciting as to invite for its description the pen of a Conrad.

If the case were unembarrassed by authority, I should say that the method of navigation prescribed by the naval authorities was the proximate cause of collision.

294 It is true that so far as disclosed by the evidence there is "nothing to show that Napoli or any other merchantman was compelled to go in convoy."

Yet this, I think, refers more to form than to substance. If a merchantman had set out without convoy for a voyage through a known submarine-operated area, her owner or master would have been subjected to grave condemnation for the risk to life, as well as property, thus recklessly incurred.

There was a moral compulsion to seek convoy aid, equivalent, in war, to a compulsion in law. When, therefore, these vessels began their voyages in opposite directions, the flotilla in which each was grouped was under command of navigators from the top down, who knew nothing whatever of the existence or movement of the other flotilla. Why was this? Obviously, because of war necessity. In effect, the navigators were not free agents, so far as concerned their ability to anticipate, by the ordinary usages and precautions of navigation, the presence of the other convoyed vessels; and, this going to sea, almost with closed eyes, was imperative for the delivery of cargoes vital to sustain the physical and economic life of allies and associates co-operating to defeat a common enemy. This war, perhaps more than any other, has emphatically demonstrated that the furnishing of munitions and supplies is as indispensable an operation of war as the movement of armies and navies. The point of the Ionides case is found in the opinion of Byles, J., when he said: "First the original meritorious cause (and in popular language the cause of the loss) was the captain's being out of reckoning. \* \* \*

295 The absence of the light was \* \* \* merely the absence of an extrinsic saving power". Thus, impulse was given to



the "aggravated marine peril" theory. But, I think it is going far to extend that theory to the case at bar.

The theory of this case should be that "a warlike operation" is not confined to actual offense, attack or armed engagement but, may, in any event, comprehend a movement of vessels initiated in accordance with sovereign compulsion for the purpose of delivering munitions and supplies either to one's own country or to allies or associates.

Of course, extravagant or fanciful illustrations may be advanced to show the extremes to which such a theory may be carried with, it is contended, illogical results; but, illustrations of that character are rarely helpful.

Yet, whatever our own views may be, I think the District Court, per Hough, J., was right in recognizing the commercial necessity of following the Petersham and Matiana cases, decided by the House of Lords by the narrow margin of three to two.

The questions in the case at bar are not local but affect an important class of world wide business in which the relations are so interwoven and connected that it would be unfortunate and confusing if a court of less authority than the Supreme Court of the United States were to arrive at a result different from that reached by the House of Lords.

For that reason, I think the decree should be affirmed.

296

*Order for Mandate.*

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit Held at the Court Rooms, in the Post Office Building, in the City of New York, on the 5th Day of June, One Thousand Nine Hundred and Twenty-two.

Present:

Hon. Henry Wade Rogers,  
Hon. Martin T. Manton,  
Hon. Julius M. Mayer,  
Circuit Judges.

THE QUEEN INSURANCE COMPANY OF AMERICA, Libellant-Appellant,

v.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent-Appellee.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.



297 On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. W. R.

M. T. M.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit.—Queen Ins. Co. v. Globe & Rutgers Co.—Order for Mandate—United States Circuit Court of Appeals, Second Circuit—Filed June 5 1922.—William Parkin, Clerk.

298 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered 1 to 297 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Queen Insurance Company of America, Libellant-Appellant, against The Globe & Rutgers Fire Insurance Company, Respondent-Appellee, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of June in the year of our Lord One Thousand Nine Hundred and twenty-two and of the Independence of the said United States the One Hundred and forty-sixth.

[Seal of the United States Circuit Court of Appeals,  
Second Circuit.]

WM. PARKIN,  
*Clerk.*

299 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Queen Insurance Company of America is appellant, and Globe & Rutgers Fire Insurance Company is respondent, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be



certified by the said Circuit Court of Appeals and removed  
300 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

*Clerk of the Supreme Court of the United States.*

301 [Endorsed:] File No. 29,129. Supreme Court of the United States, October Term, 1922. No. 579. The Queen Insurance Company of America vs. Globe & Rutgers Fire Insurance Company. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 12, 1922. William Parkin, Clerk.

302 To the Honorable Supreme Court of the United States,  
Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the Clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York December 12, 1922.

[Seal of the United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,

*Clerk of the United States Circuit Court  
of Appeals for the Second Circuit.*

303 & 304 In the Supreme Court of the United States, October Term, 1922.

No. 579.

QUEEN INSURANCE COMPANY OF AMERICA, Petitioner,  
against

GLOBE & RUTGERS FIRE INSURANCE COMPANY, Respondent.

It is hereby stipulated and agreed that the certified transcript of record already on file in the office of the Clerk of the Supreme Court of the United States may be taken as the return of the Clerk



of the Circuit Court of Appeals for the Second Circuit to the Writ of Certiorari issued herein.

Dated, December 7th, 1922.

R. ROGER ENGLAR,  
D. R. HOUSTON,

*Counsel for Petitioner.*

VAN VECHTEN VEEDER,  
CHARLES C. BURLINGHAM,

*Counsel for Respondent.*

305 & 306 [Endorsed:] United States Circuit Court of Appeals,  
Second Circuit. Queen Insurance Company of America  
v. Globe & Rutgers Co. Return to certiorari. 1.70.

307 [Endorsed:] File No. 29,129. Supreme Court U. S.,  
October Term, 1922. Term No. 579. The Queen Insurance  
Company of America, Petitioner, vs. Globe & Rutgers Fire Insurance  
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# Supreme Court of the United States,

OCTOBER TERM—1923.

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QUEEN INSURANCE COMPANY OF AMERICA,

*Petitioner,*

—against—

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

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## BRIEF FOR THE PETITIONER.

(*On Certiorari.*)

The steamship "Napoli" was sunk by the steamship "Lamington" in a collision between two convoys sailing without lights that met almost head on in the Mediterranean about midnight on July 4th, 1918. The "Napoli" carried a cargo, part of which consisted of munitions, raw materials for the manufacture of munitions, Red Cross surgical and medical supplies, and other articles consigned to various departments of the Italian Government at the Italian base, Genoa, for use in the War (Hann, pp. 177-180), and also some goods in which the British Government was interested, and some general merchandise for private consignees. A large part of the cargo, of course, was insured against both war and marine risks, in some cases both risks being placed with one company and in others the marine risk being placed with one company and the war risk being carried by another company, or with one of the Government War Risk Bureaus. Owing to the peculiar circumstances surrounding the loss, a question arose as to whether the loss should be regarded as a war



risk or a marine risk. Most of the marine and war risk underwriters each paid one-half the amount insured by them, and each set of underwriters took assignments of the assureds' rights against the other set. In the present case the petitioner insured a shipment of asbestos fiber, shipped from New York consigned to the British Consul at Genoa, against marine risks (Ex. A, at p. 6) and the appellee insured the same shipment against the usual war risks (Ex. A, at p. 6). Each company has paid one-half of the amount insured by it, without prejudice, and taken an assignment of the beneficial interest of the assured against the other underwriter (pp. 7-8). The present suit is brought by the company insuring the marine risk to recover the unpaid balance of the war risk policy.

### ***Situation at the Time of the Collision.***

At the time the collision occurred, July 4th, 1918, the war was at an acute stage. The last great German attack on the Western Front was about to begin and the Allied counter-stroke followed soon after. Germany had staked her chances on submarine warfare, and her submarines in the Mediterranean, as well as elsewhere in the so-called war zone, were sinking merchantmen without regard to their flag and with the ruthless disregard for the lives of civilians that characterized the German submarine warfare at its worst. A few of the fast liners like the "Leviathan" and the "Aquitania" were still crossing the seas without convoy (except when leaving or nearing port), and trusting to their speed and the guns they carried for protection. But for the slower merchantmen (such as the "Napoli" and the "Lamington" and the other vessels making up the two convoys) the only practicable method of navigation in the war



zone was in convoy. As Judge Hough, before whom the case was tried, found (p. 183):

"It is an inference easily made from what is proven, that she (the 'Napoli') would have run far greater danger by avoiding convoy than by joining one; she sought the protection of a convoy, and so did all other well advised vessels of no greater speed than 'Napoli' possessed (twelve knots)."

In the statement of facts in the Circuit Court of Appeals it is stated (p. 199) that:

"There appears to be no national or international authority which required the vessels to sail in convoy, but this custom at the time was universally followed."

Judge Mayer, in his concurring opinion, phrased the same thought as follows (p. 205):

"It is true that so far as disclosed by the evidence there is 'nothing to show that "Napoli" or any other merchantman was compelled to go in convoy.'

Yet this, I think, refers more to form than to substance. If a merchantman had set out without convoy for a voyage through a known submarine-operated area, her owner or master would have been subjected to grave condemnation for the risk to life, as well as property, thus recklessly incurred.

There was a moral compulsion to seek convoy aid, equivalent, in war, to a compulsion in law."

### ***General Plan of the Convoys.***

The Mediterranean convoys were made up at Gibraltar and Genoa respectively, Genoa being the principal army base for the Italian army and Gibraltar being one



of the principal naval bases for the British Mediterranean fleet. The convoys were made up under the direction of the naval authorities at Gibraltar and Genoa respectively. Each convoy consisted of a varying number of merchantmen of about the same speed and a naval escort assigned to convoy them. Each convoy had a naval officer as Commodore of Convoy, who sailed on one of the merchant ships. The senior Commander of the convoying warships commanded such warships. The entire convoy was in command of the Senior Naval Officer, who might be either the Commodore of Convoy or the Senior Commanding Officer of the escorting vessels, whichever happened to be senior (pp. 144, 154, 155). Each convoy was given certain secret sailing instructions upon leaving the naval base. These instructions emanated from the naval authorities in command at Genoa or Gibraltar (pp. 138-9). The Senior Naval Officer had discretionary authority to vary the sailing orders as circumstances might require, and the detailed navigation was prescribed from time to time by the naval officers in the convoy.

*No freedom of navigation whatever was permitted the merchantmen in the convoy. Their navigation was prescribed in three ways:*

(1) By the sailing orders issued at the base from which they started (pp. 138-9, 171, Exhibits 1, p. 13, and 5, p. 66):

(2) By the Commodore of Convoy and the Senior Naval Officer (pp. 144, 146, 154), and

(3) By certain general British convoy regulations as to lights, etc. (pp. 140, 142).



In one or another of these ways, the naval authorities prescribed:

(1) The course of each convoy (pp. 139, 140, 145, 153, 154, 155, 14, 68).

(2) The speed of the convoys (pp. 155, 146, 147, 68).

(3) The arrangement of the vessels in tiers and columns (pp. 142, 145, 67).

(4) Their distance apart (pp. 160, 68).

(5) When to zigzag and the exact zigzag to be followed (pp. 145-6).

(6) That no lights must be shown except in great emergency (pp. 108, 128, Q. 145-7, p. 141).

(7) As Captain Asserson said, the Senior Naval Officer was in "command of the entire convoy, merchant as well as naval vessels" (p. 144) and even matters of immediate navigation such as porting and starboarding were prescribed by the Commodore of Convoy (p. 145). As Captain Burns phrases it, the Senior Naval Officer was responsible "for the manoeuvres, laying off courses and general conduct" of the whole convoy (p. 161).

These regulations had the legal status of law and the sanction of force behind them. The convoys were proceeding under the British regulations, and all vessels in convoy were subject to the British Naval Discipline Act of 1886. This is well pointed out by Lord Shaw in the case of *The Matiana* (1921), 1 A. C., at pp. 123-4, where he says of the British Naval Discipline Act:

"Sect. 31 of that Act provides: 'Every Master or other Officer in command of any Merchant or other Vessel under the Convoy of any Ship of Her



Majesty shall obey the Commanding Officer thereof in all Matters relating to the Navigation or Security of the Convoy, and shall take such Precautions for avoiding the Enemy as may be directed by such Commanding Officer; and if he shall fail to obey such Directions, such Commanding Officer may compel Obedience by Force of Arms, without being liable for any Loss of Life or of Property that may result from his using such Force.' It is difficult to figure language which more emphatically puts the naval commander of the convoy in control of the movements of the merchant vessel. To all intents and purposes it is the same as if he had placed on the convoyed ship a naval officer in command as subordinate to himself. In short, so far as the direction of the course of the vessel was concerned, the merchant captain and officers were no longer in control. The naval officers were. Not only so, but the orders of the commander of the convoy were clothed with the instant sanction of force. An order disobeyed might be followed by the guns of the convoy being levelled or fired against the offending vessel, and the officer is secured by statute against liability for any consequent loss of life or property."

The fact that even the minutest details of navigation of the merchant ships in the convoy, as well as their general course, were prescribed by the naval authorities is recognized in the statement of facts in the Circuit Court of Appeals (pp. 198-199) and also by Judge Mayer (p. 205) as well as Judge Hough (p. 183).

### ***The Eastbound Convoy.***

The steamship "Napoli" was one of the merchant ships in a convoy bound from Gibraltar for Genoa. The convoy consisted of twenty ships (of which two or



three left the convoy before the collision and proceeded to Marseilles) (Asserson, p. 130). The escorting warships were as follows: The British Warship H. M. S. "Jeannette II," commanded by Captain Ryan, who was the senior naval officer of the convoy, the British Trawler "Algol," the Italian Auxiliary "Tocra," and the U. S. S. "Castine," commanded by Captain Asserson, U. S. N. The convoy left Gibraltar on June 30th, 1918 (Asserson, p. 138). The Commodore of Convoy was Commander Ignasio of the Italian Navy on board the S. S. "Napoli" (p. 138).

### ***Sailing Instructions of the Eastbound Convoy.***

The convoy received through Admiral Niblack, commanding the United States Patrol Forces at Gibraltar, from the Chief of Staff to Admiral Grant, Royal Navy, who was the senior officer of Gibraltar, written sailing instructions (pp. 138-9), the material portion of which was as follows ("Castine" Sailing Orders, p. 14):

"2. The route to Genoa is as follows:

After leaving Europa Point steer to pass through the following positions:

(1)	Lat. 35..30 N.	Long. 04..00 W.	
(2)	" 36..00 N.	" 00..40 W.	
(3)	" 36..20 N.	" 00..00 W.	
(4)	" 37..10 N.	" 03..05 E.	
(5)	" 37..10 N.	" 05..08 E.	
(6)	" 41..20 N.	" 07..40 E.	
(7)	" 41..47 N.	" 07..43 E.	Toulon
			Rendezvous
XH (8)	" 42..58 N.	" 07..50 E.	Genoa
			Rendezvous

Thence according to instructions from Genoa.

"6. The convoy is timed to arrive at Toulon R. V. (41..47 N.—7..43 E. at 0900) (9 A. M.)



on the 5th July, steering for a position on (42..58 N.—7..50 E. The Genoa R. V. The Commodore is to report through the senior officer of the escort by W/T to Viadux, Marseilles, how many hours ahead or behind the scheduled time of arrival the convoy is expected to be at the Toulon R. V.

\* \* \*

"8. The convoy is timed to arrive at the Genoa R. V. (42..35 N.—7..50 E?) at 1900 (7 P. M.) on 5th July. The Commodore is to report through the Senior Officer of the Escort by W/T to Madelena or Cape Sperone for Viadux Genoa, 24 hours before arriving the number of hours he is ahead or behind the scheduled time of arriving in accordance with instructions issued with the Secret Positions which are to be obtained from Operations before sailing.

"9. The convoy is timed to arrive off Genoa at 0900 (9 A. M.) on the 6th July, which time is to be kept."

### ***Course of the Eastbound Convoy.***

The convoy followed the prescribed route (p. 139), but slightly East of the exact position laid down in the sailing orders. This convoy had gotten twenty-four hours ahead of scheduled time when the collision occurred, on orders from the Senior Naval Officer (p. 147). At the time of the collision, the convoy had passed the Genoa Rendezvous and, as no instructions had been received from Genoa (so far as the record shows) was proceeding on a course prescribed by the Senior Naval Officer (p. 183):

"Q. What were your general instructions as to the following of the sailing instructions as to routes in the convoys? A. The route was ordinarily to be followed closely; the senior officer



present could, of course, change these for any sufficient reason, such as a submarine being reported in the vicinity" (Asserson, p. 140).

On the voyage the convoy received a number of reports of submarines in the general vicinity (Asserson, pp. 140-1). On July 4th at 6:59 P. M. the convoy received a message from the Italian Auxiliary "Citta di Bengazi," reporting a submarine 43.25 N.—8.27 E. This was the report of the encounter with a submarine of the convoy in which the "Lamington" was traveling (p. 141) which is described hereafter.

The courses of the two convoys were plotted on a chart by the commanders of two of the conveying warships (pp. 141, 154). This chart was marked Libellant's Exhibit 1, and is referred to on page 100, but not printed.

It is quite true, as Judge Hough says in his opinion (pp. 183, 184), that the sailing courses laid down in the instructions issued at Genoa and Gibraltar did not necessarily result in the collision. It is, however, indisputable that the courses laid down in the sailing instructions, *plus the detailed orders of navigation given during the voyage by the Senior Naval Officer and Commodore of Convoy*, did necessarily bring the two convoys into collision.

The Commodore of the eastbound convoy, who was on board the "Napoli," signalled in the afternoon of July 4th to all vessels of the convoy and the escort that an additional escort of Italian destroyers would probably be met with about midnight (Asserson, p. 143). The collision occurred at about 11:38 P. M. (Greenwich Mean Time) (Asserson, p. 142). (Note that the "Cas-tine's" log gives the hour as 12:38, but the War Diary is correct and the log is probably just an accidental use of Genoa Daylight Saving Time.)



### ***Sailing Instructions of the Westbound Convoy.***

This convoy consisted of sixteen merchantmen, conveyed by the U. S. S. "Yankton" commanded by Captain Burns, U. S. N., who was the senior naval officer of the convoy, the Italian Naval Auxiliary "Citti di Bengazi," the Italian Destroyer "Granatierre," and the British Trawler "Achenar." The Commodore of the Convoy was on the "Ansaldo III". The sailing instructions were as follows (p. 68):

"Convoy will form outside the port according to diagram attached. (The diagram was not obtainable, but the detailed course is given by Captain Burns' testimony, and by the Italian Court Inquiry.)

Column will be 800 yards zigzag.  
600 yards no zigzag.

Ships in column 400 yards.

Ships to take station as soon as possible. When formed, speed will be ordered by signal. The maximum speed of the convoy will be  $7\frac{1}{2}$  knots. Zigzag No. 2 will be used if signal is made to zigzag.

**ROUTES.** After leaving red buoy. South true and then courses in according to the signal of Commodore."

The convoy formed outside of Genoa at 10:30 A. M. July 4th, and consisted of eighteen merchant ships—a front line of eight ships, a second line of seven ships, and a third line of three ships (p. 70). The convoy's speed was  $7\frac{1}{2}$  knots, and the "Yankton" was on the starboard flank, one point forward of the beam of the first line of ships ("Yankton" War Diary, p. 70).

About 7 P. M. on the 4th the convoy was proceeding on a course 214 Deg. true, when the steamer "Merida" was torpedoed. The "Yankton" stood to the rear and the other escorting vessels dropped depth bombs, etc.



Between four and five in the afternoon before the submarine attack, the Convoy Commodore had directed the following changes of course which should be made during the night: (This was the customary method of arranging during the day time by flag signals for the changes of course which were to occur during the night.) The orders were at 8:30 P. M. to change course to 247 Deg. true and at 10:30 P. M. to change it to 261 Deg. true (Burns, p. 154; "Yankton" War Diary, p. 70). These instructions were obeyed (Burns, p. 154).

Plotting the course of the "Yankton" shows that between 7 P. M., when the attack occurred, and 8:30 P. M., when the change of course occurred, the west-bound convoy departed materially from her course. Just exactly what these changes of course were, we have not been able to ascertain because the "Yankton" was off her station and did not get all the messages (Burns, p. 154), and the communication log of the "Yankton" shows some signals which we have been unable to translate, as they are stated by Captain Burns (not in the record) to have been given in a typewritten code supplied specially for this voyage and not now available. It appears, however, that *during and as a result of the submarine attack, the course had been changed at least twice by signal from the Commodore—once to the right and once to the left* ("Yankton" War Diary, p. 70; Burns, p. 154). The distances or times not being known, it is uncertain whether these changes neutralized each other or not, but it is stated in a letter from the Admiralty of September 10th, 1920, that:

"5. As one of the convoys had been forced away from its route, owing to the presence of submarine, the routes followed by the convoys cannot be of any material assistance" (p. 120).



### ***Conditions of the Convoys Immediately Before the Collision.***

The eastbound convoy was proceeding on a course 45 Deg. true. The "Napoli" was in the front line—the third ship from the left (Commission of Inquiry, p. 114) or the fourth ship from the left (Bologna, p. 123, Q. 22). The convoy was proceeding at  $7\frac{1}{2}$  knots (Bologna, p. 123, Q. 26). The vessels were about 400 yards apart from beam to beam (pp. 144, 160). Between each tier that is, from the stern of the front ship to the bow of the ship behind it in the next tier, was about 600 yards (pp. 145, 160). All the vessels were operating without lights in accordance with instructions from the British Authorities (Asserson, p. 140; Goodrich, p. 171; Bologna, p. 130, Q. 145).

The westbound convoy was proceeding on a course 260 Deg. true. The vessels were about 500 yards apart from side to side and about 400 yards apart between tiers (Burns, p. 160; Opinion, p. 185). This would give a frontage of a little less than two miles for the Eastbound convoy and a little more than two miles for the Westbound convoy, and Judge Hough so found (p. 185).

The speed of the Westbound convoy was approximately  $7\frac{3}{10}$  knots, as is stated in Judge Hough's opinion (p. 186). The Eastbound convoy was proceeding at a slightly greater speed,  $7\frac{1}{2}$  knots (p. 123; Q. 26).

### ***The Collision.***

The collision occurred at about 11:38 P. M. There is a sketch showing approximately the way it occurred, which was based on the findings of the Italian Commission (Exhibit 10, p. 101). Some of the evidence ob-



tained later contradicts it in some details, none of which are believed to be material to the case. (See Judge Hough's Opinion, p. 185).

The situation was briefly this: Two tiers of ships, each about two miles across, became aware of each other at a distance of approximately one-half mile. They were approaching each other at a combined speed of about fifteen knots, so that from the time they became aware of each other until they would have collided, there was only from two to three minutes of time for manœuvring. Behind each tier of ships were two following tiers, which obviously could not appreciate what was going on in front of the front tier, but which could be expected to do, what they, in fact, did do, namely, continue on their course and thus run on to the front tier if the front tier stopped or slowed. There is nothing to indicate that when the vessels of the front tier perceived each other any of them appreciated that they were encountering a large convoy. It is to be remembered that the Eastbound convoy, at least, was anticipating meeting further Italian destroyers to act as escort, and some or all of the vessels may well have mistaken the Westbound convoy for such destroyers. Capt. Burns, for example, thought there was a submarine attack (p. 164). Neither convoy had any advice that they might expect to meet or pass near any other convoy. As Judge Hough points out, the Naval Authorities had taken no steps to inform either convoy of the location of the other.

On this subject, Judge Hough said (p. 189):

"It follows that, in my opinion, a certain and important navigator's fault lay with the Senior Naval Officers of both convoys in failing to take any steps to prevent just such a meeting as did occur."



Again Judge Hough said (p. 194) :

"Here, in my judgment, there was a singular and inexcusable lack of care in indicating any lanes of traffic to the opposing streams of convoy travel between Genoa and Gibraltar; and these convoys were moving almost like ferries."

### *The Question of Negligent Navigation.*

All the facts stated up to this point are clearly established, without substantial conflict. But when the leading ships of the two convoys perceived ships approaching, great confusion naturally arose, and the accounts of the manoeuvres of the various ships are fragmentary, and frequently contradictory. Perhaps the best summary of the conflicting accounts is given in the opinion rendered by Mr. Justice Hill in the suit brought in England by the owners of cargo on the "Napoli" against the owners of the "Lamington." He said (p. 175) :

"The convoys sighted one another at a short distance. I accept the evidence for the defendants that it was something like 350 yards. The lights were switched on. Each of these ships and the other ships made a number of manoeuvres, ported and starboarded, to avoid other ships, and finally these two collided. When I say 'finally,' I have taken almost more time to describe what was taking place than was probably occupied between the time of sighting and the collision. The speed of the 'Lamington' was six to seven knots, and the speed of the 'Napoli' was, in convoy, seven and a half knots. The 'Napoli' says that she slowed and stopped, but, even assuming that to be the case, the joint speeds must have been still 10 to 12 knots, at least until a very short time before the collision, and, therefore, the



whole thing must have happened in a very short time, probably a minute. There was undoubtedly great confusion, and, according to the Master of the 'Napoli,' all sorts of whistle signals were being sounded by many ships.

"The 'Napoli's' account, I gather, of what happened is that, having slowed and then stopped, the green light of the 'Lamington' was seen 150 metres away, as pleaded, on the port beam, and the 'Napoli' hard-a-ported and went full speed astern. That port beam is altered in evidence to three points on the port bow. The 'Lamington' says that what happened was, that she saw the green light of the 'Napoli' about three lengths away—or, as pleaded, I think it is rather further, two cables—fine on the starboard bow. The 'Lamington' starboarded.

"The green light broadened, and then the red opened, and the 'Lamington' went full speed astern, and the collision followed. The pleaded case of the 'Napoli' on the causes obviously will not bring about a collision at an angle of seven points heading aft on the 'Napoli,' which is the agreed angle; and, when I find so great a difference between the evidence case of the 'Napoli' and her preliminary act case, in so important a particular, I am quite incredulous as to the 'Napoli's' evidence, and I am quite unable to act upon it.

"On the other hand, the 'Lamington's' Master has given his evidence this morning, and given it very well, and I accept it. The difficulty in accepting it is to reconcile the angle with the starboarding and hardastarboarding of the 'Lamington' and the hardaporting of 'Napoli,' if the 'Napoli' had first gone slow and then stopped and had her engines stopped and very little way at the time she saw the 'Lamington.' I am incredulous about this evidence of the 'Napoli,' and I do not know that her engines were stopped. I am really not at all sure that the lights which each says they saw on the other ship were the lights of the other ship, or were not the lights of other vessels in the convoy \* \* \*."



Judge Hough reached the conclusion that both the "Napoli" and the "Lamington" were at fault in their navigation (p. 187). Judge Manton in the Circuit Court of Appeals seemed to agree (p. 204).

But, even if this be so, such faults in navigation were clearly *error in extremis*.

Judge Mayer in his concurring opinion said (p. 205):

"The District Court was of opinion that the collision resulted proximately 'from poor navigation on the part of both vessels.' It seems to me that neither vessel was legally at fault. If we assume that the District Court was right in ascribing fault to each vessel, yet such fault must be regarded as having been committed *in extremis* in a situation so unexpected, confusing and exciting as to invite for its description the pen of a Conrad."

In the British case, Mr. Justice Hill decided (p. 176):

"\* \* \* it seems to me to be quite clear that this is one of those cases in which two convoys, unlighted, suddenly became aware of one another's presence at a very close distance, became greatly confused in their formation, and in their efforts they made to avoid one another, without any fault on the part of anybody, the collision took place."

The Italian Court of Inquiry said:

"Owing to the short distance between the two convoys, the courses whereof were bringing them to meet \* \* \* it was not possible for the two convoys to manoeuvre and bear at the same time to the convenient side in order to avoid a collision. Nor was it possible to stop the two convoys, because in the instructions given no provision was made for a luminous emergency signal to order such a manoeuvre."



"No general manoeuvre, on the other hand, being possible, each Commander manoeuvred separately endeavoring to avoid a collision (p. 115).

"The Commission, however, feel it their duty to point out the circumstances under which the manoeuvres in question had to be executed and are of opinion that the anxiety of the Commanders must have been very great because, besides having to avoid the steamers ahead, they had also to see to avoid being struck by those astern. Moreover, the sudden appearing of so many lights, the noise of so many sound signals directing the manoeuvres must necessarily have generated a confusion which was entirely to the disadvantage of the necessary calm which every Commander had to preserve in order to avoid collisions which appeared impending from all sides" (p. 117).

Captain Asserson's account of the collision, in answer to Mr. Burlingham's *cross examination* was as follows:

"Q. It was each ship to do the thing that was at hand? A. Each ship for herself to do the best she can.

"Q. And, of course, you not having seen the thing, whether the 'Napoli' or 'Lamington' or the 'Sverdrup' did the right thing or not in the circumstances—it was a case for quick and prompt and independent navigation—and no man who didn't see it could judge whether they did the right thing or the wrong thing? A. That is exactly right.

"Q. And nobody could say whether it could have been avoided or could not have been avoided by prompt action on the part of the navigating officer of either of the colliding boats, is that it? A. That is exactly it" (pp. 152-3).

Captain Burns' account was as follows (p. 166):

"At about 11:40 a white light was observed which was thought to be on the Commodore's ship, remaining on about 10 seconds. Blasts of



whistles followed, whereupon a number of ships turned on navigational lights, a great confusion of whistles, some one blast, others two blasts, others three blasts. Ships in the center and left in great confusion. At 11:50 green and red lights were observed steering in various directions. One ship observed steering in opposition direction to course of convoy and stood through the formation. Ships on our flank turned on lights, steered to right, then to left. I was unable to determine what had taken place. My first impression was that a submarine attack had taken place, but no warnings to this effect were given. The confusion of whistles and lights moving in many directions continued until about 12:15. Manoeuvred at full speed so as to keep in touch with as many ships as possible and finally steered on course 261 deg. true, having five ships together. A few other ships were observed in the darkness well off on port hand."

### POINT I.

**The loss was a proximate result of "acts of Kings in prosecution of hostilities."**

The respondent's policy of war risk insurance provided that

"This insurance covers \* \* \* destruction, or damage, by \* \* \* acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations" (Exhibit B, Record, at p. 6, quoted on p. 2).

It is submitted that the loss of the cargo of the "Napoli" is recoverable under this policy.

If the "Napoli" and the "Lamington" had been approaching each other at the time and on the courses



on which they were proceeding at the time of the present collision, and each had been navigating alone under peace time conditions, and they had become aware of each other at a distance of even 350 yards, it would have been perfectly simple for them to have avoided the collision, and it can hardly be doubted that no collision would have occurred. The reason that they collided was that the conditions under which they were operating, upon orders from the naval authorities, rendered it practically impossible for them to avoid each other without colliding with other ships. The efficient cause of the collision, it is submitted, was the combined effect of navigating as units two great fleets of vessels, traveling in comparatively close formation, without lights, upon courses which met and without any system by which either convoy was advised of the approach of the other. All these proceedings were directly prescribed by the naval authorities as has been pointed out in the statement of facts.

The methods of navigation of the convoys were unquestionably adopted as an essential part of the conduct of the war. The war was not won alone upon the battlefields of France; it was won as much, perhaps, by the methods adopted by the Allies, on the one hand to keep food supplies and munitions out of Germany, and, on the other hand to keep streams of such commodities flowing from the producing sections of the earth to the ports and naval bases of the European Allies. The war was a war between nations, and it was won by the Allies in large part because they were able to draw continuous supplies, both for the army and navy and for the civilian populations, from the lands across the seas not directly desolated by the war. If merchant ships had continued to navigate in the war zone in the same way that they sailed in times of peace, the experiences of the earlier years of the war, particularly in the Spring of 1917,



when the intensified submarine campaign was launched by Germany, clearly demonstrated that the German submarines would, in a comparatively short time, sink so large a portion of the total tonnage of the world as to cut off from the European Allies munitions and supplies which were essential to their successful conduct of the war. It was to meet this condition that the convoy system was adopted. The convoy system, it is submitted, was, therefore, directly a war measure. It afforded ships increased protection against submarines, but, on the other hand, it created new dangers, including the risk of such disasters as the one here involved. As war risk underwriters thus benefited from the convoy system, it is submitted that they should also bear the burdens which this system created. This is essentially equitable, for, while marine risk underwriters received substantially the same premium during the war as before the war, war risk underwriters received from five to ten and even as high as forty per cent. premiums. As they were paid for assuming the extra risks of war, it is essentially unfair that disasters like the present should be imposed upon the marine underwriters.

This view was very clearly expressed by Judge Mayer, who said (p. 205) :

"If the case were unembarrassed by authority, I should say that the method of navigation prescribed by the naval authorities was the proximate cause of collision.

\* \* \* \* \*

"When, therefore, these vessels began their voyages in opposite directions, the flotilla in which each was grouped was under command of navigators from the top down, who knew nothing whatever of the existence or movement of the other flotilla. Why was this? Obviously, because of war necessity. In effect, the navigators were not free agents, so far as concerned their ability



to anticipate, by the ordinary usages and precautions of navigation, the presence of the other conveyed vessels; and, this going to sea, almost with closed eyes, was imperative for the delivery of cargoes vital to sustain the physical and economic life of allies and associates cooperating to defeat a common enemy. This war, perhaps more than any other, has emphatically demonstrated that the furnishing of munitions and supplies is as indispensable an operation of war as the movement of armies and navies. The point of the *Ionides* case is found in the opinion of Byles, J., when he said: 'First the original meritorious cause (and in popular language the cause of the loss) was the captain's being out of reckoning. \* \* \* The absence of the light was \* \* \* merely the absence of an extrinsic saving power.' Thus, impulse was given to the 'aggravated marine peril' theory. But, I think it is going far to extend that theory to the case at bar.

"The theory of this case should be that 'a warlike operation' is not confined to actual offense, attack or armed engagement but, may, in any event, comprehend a movement of vessels initiated in accordance with sovereign compulsion for the purpose of delivering munitions and supplies either to one's own country or to allies or associates."

Judge Hough quite clearly expressed himself as in accord on principle with this view, saying (p. 192 *et seq.*):

"My own view on this matter is that of Bailhache, J., expressed in *The Petersham (Britain, etc. Co. v. The King* [1919], 1 K. B., 575, 580), and *The Matiana (British, etc. Co. v. Green* [1919], 1 K. B., 632, 636), viz.:

"However peaceful the immediate business upon which a ship is engaged—if she is sailing as one of a convoy she is engaged, in my opinion, in a warlike operation. The assembling, presence, protection and movements of the King's ships pro-



teeting the convoy are a warlike operation, and both convoyed and convoying ships are taking part in it, and that character attaches to the whole flotilla and covers the whole operation.'

"And the learned Judge continues:

"Suppose a dangerous route from which lights had been removed was prescribed (by the authorities) to deceive the enemy; and a ship taking such a route, without negligence runs ashore and is lost as the direct result of the removal of the lights;—would such a loss be covered by the words "warlike operations"? I think it would, but not because the ship was carrying out a warlike operation. The warlike operation would be the removal of the lights.'"

Judge Hough further said:

"This I think to be the large and common-sense view of the situation. Quite possibly there was a time when war was no more than the *ultima ratio regum*; and while Kings wrangled traffic might continue subject to the right of search and most oppressive Stowell-made rules as to contraband; but still it was essentially peacetime traffic, peacefully conducted in the main.

"But when war became what it was between 1914-1918, it is now history that commerce existed only as an adjunct to war and for the purpose of creating and maintaining armed forces to insure the economic defeat of the enemy.

"The 'Napoli' was taking a cargo from America to Italy, and even Courts may take cognizance of the fact that in June, 1918, no such cargo was a possibility that did not in the opinion of governmental representatives from at least three Governments (British, Italian and American) directly assist in the task of defeating Germany. In a large sense the very act of sailing was a consequence of hostilities. In short, almost every act of the warring countries after the home-staying population was fed, clothed and sheltered, was but a manifestation of war. For these reasons I



agree in principle with Bailhache, J., and particularly sympathize with the defiance flung by him at the reasoning of the *The Ionides* case, *supra*, indicated in the last of the above quotations."

**The lower Courts reached their conclusions, not on principle, but out of deference to the decision of the House of Lords in the cases of the *Matiana* and *Petersham*.**

Judge Mayer phrased this very clearly, saying (p. 206) :

"Yet, whatever our own views may be, I think the District Court, per Hough, J., was right in recognizing the commercial necessity of following the *Petersham* and *Matiana* cases, decided by the House of Lords by the narrow margin of three to two.

"The questions in the case at bar are not local but affect an important class of world wide business in which the relations are so interwoven and connected that it would be unfortunate and confusing if a court of less authority than the Supreme Court of the United States were to arrive at a result different from that reached by the House of Lords."

Judge Manton rested his opinion on the ground that the collision was due to negligence (p. 291). Judge Rogers concurred in affirmance without stating his reasons (fol. 290).

Judge Hough, sitting in the District Court, said (p. 194) :

" \* \* \* it must be held under authority, to which for business purposes the Courts of the United States should conform, that the collision in question was not proximately caused by any act of hostility or by the consequences thereof  
\* \* \* "



### *The English Cases.*

The course of the English opinions may be outlined as follows: The first case of moment is *The St. Oswald, British & Foreign Steamship Co. v. Rex* (1918), 2 K. B., 879; 34 T. L. R., 546 (Court of Appeal). *The St. Oswald* was requisitioned by the British Admiralty under the terms of a charter by which the Government assumed the risk of "all consequences of hostilities or warlike operations." The ship was employed in December, 1915, in assisting in the evacuation of the British troops from Gallipoli and bringing them back to the base at Indros. Under Admiralty instructions she was proceeding at night at full speed without lights towards Gallipoli. The French warship "Suffren" was proceeding similarly at full speed and without lights, and the two ships became aware of each other at a distance of about a quarter of a mile. Their navigating officers, in the extremity in which they found themselves, both turned in the same direction and came into collision, as the result of which *The St. Oswald* was lost. The Courts found that the collision was occasioned solely by the absence of lights and the speed at which the vessels were proceeding. The Judges of the Court of Appeal then said that as the Attorney General had admitted that sailing at full speed without lights was a military operation, the loss was the result of a warlike operation and fell upon the Admiralty, and a reading of the three opinions in the Court of Appeal fairly indicates that the decision was reached on the theory that sailing at night at full speed and without lights under Admiralty orders is a warlike operation; that if, as a result of this dangerous form of navigation, two ships do not see each other in time to avert a collision, and if there is no intervening fault on the part of either ship (*error*



in *extremis* not being considered such a fault), the loss will be held to be a war risk. This was the interpretation put upon the case by Mr. Justice Bailhache in the case of *The Larrinaga* (1920), 1 K. B., at page 705, and by Viscount Cave in *The Petersham* (1921), 1 A. C., at page 108.

This is at least an intelligible rule which would be workable in all cases. The rule has, however, not been followed in the later British cases, as appears hereafter.

*The Petersham* (1921), 1 A. C., 99;

*The Matiana* (1921), 1 A. C., 99.

These two cases were decided together in the House of Lords. *The Petersham* was carrying a cargo from Bilbao to Glasgow for private interests and came into collision off the Cornish coast with the Spanish merchant ship *Serra*, which was on a voyage from Swansea to Bilbao with a cargo of fuel, also for private owners. Both vessels were proceeding at night, without lights, pursuant to Admiralty orders, and, as a result, did not see each other in time to avoid collision, although neither ship was negligent. The House of Lords decided that the loss was an ordinary marine risk, on the ground that the carrying of ordinary merchant cargo was not a warlike operation and was not made such by the fact that it was carried on by the ships sailing without lights under Admiralty instructions. The opinions of the various Lords distinguish *The St. Oswald* on the ground that the evacuation of troops from Gallipoli was a warlike operation and that, therefore, her loss was attributable to a warlike operation.

*The Matiana* was a case involving a vessel in convoy. *The Matiana* was carrying a cargo of cotton for private owners from Alexandria to a British port and with three



other merchant ships was under convoy with an escort of four British warships. The Senior Naval Officer of the convoy directed the convoy to take a course which was quite unusual and which brought the convoy close to the Keith Rocks, a dangerous reef in the Mediterranean. Under similar orders of the Senior Naval Officer the convoy zigzagged on its course. During a still night, when there was no surf to disclose the presence of part of the reef which lay just below the surface of the Mediterranean, *The Matiana* stranded on one of the outlying rocks and became a total loss. Judge Bailhache, who tried the case in the court of first instance, held that it was a war loss, saying (1919) 1 K. B., 632, at page 636:

"To sail with convoy is, in my opinion, a warlike operation. The assembling of the ships to be convoyed, and of the men-of-war to convoy them, the voyage of the whole flotilla, the route chosen and the precautionary measures taken on the voyage must be taken together as all part of a warlike operation. In this case the vessels pursued a zigzag course, and were sailing at the time of the stranding through a submarine-infested area, and some 30 miles to the northward of the ordinary peace time course. The stranding happened in the course of this warlike operation, and, subject to another point made by the war risk underwriters, was directly due to it."

The Court of Appeal reversed Judge Bailhache, and the House of Lords, by a vote of three to two, affirmed the decision of the Court of Appeal, holding that the loss of "*The Matiana*" was a marine loss. The ground upon which the Court of Appeal proceeded is expressed as follows by Lord Justice Atkin (1919) 2 K. B. 670, at page 698:

"It appears to me fallacious to identify the merchant vessels sailing with convoy with the



warships which escort them. The warships are engaged in the warlike operation of protecting non-combatant vessels from the enemy. The merchant vessels are engaged in the peace-like operation of conveying merchandise by sea. The sheep are not the shepherd; and are not engaged in the operation of shepherding."

This passage was quoted with approval by the majority of the House of Lords. Their theory was that as the merchant vessels were engaged in a peace-like operation at the time of the stranding, there was no war-like operation to which the loss could be attributed, and, therefore, the stranding must have been due to an ordinary marine peril. Lord Shaw and Viscount Cave dissented. Lord Shaw put his dissent upon the following ground:

"I do not doubt that so far as the ships acting as convoy were concerned they were thus conducting a warlike operation. I think the decision in the case of *Ard Coasters Ltd. v. The King*, to the effect that a warship patrolling in the course of her duty and thereby causing a collision with a merchant vessel, was a right decision. \* \* \* Suppose, in the present case one of the ships acting as convoy had run down one of the ships convoyed, I can hardly doubt that that event would have been similarly found. The case accordingly is narrowed to the distinction between ships which are acting as convoy and ships which are themselves under convoy. I myself see great force in the view which Bailhache, J., so clearly expresses to the effect that all the vessels—those acting as convoy and those under convoy—must be treated as a unity. He concludes accordingly that they were all engaged in warlike operations. I respectfully agree with that learned judge. \* \* \*

"I am humbly of opinion that, so far as ships under convoy are concerned, all these ships are,



along with the ships acting as convoy, under a unified command, and that command issuing from the commander of the convoy is, as part of the direction of the convoy, a military operation. The consequence of it upon those merchant vessels to whom the command was issued was to place them compulsorily in a situation of peril in which unquestionably they would not have been placed but for the course thus forced upon them."

Viscount Cave expressed his dissenting view as follows (1921), 1 A. C., 107, at pages 110, 111:

"No doubt the existence of the reef and its surrounding currents was a condition without which the vessel would not have stranded; but the true cause of the stranding was the act or event which brought the vessel within their dangerous influence. If she had been driven upon them by a storm or by hostile pursuit, or had been brought there by the negligence of those on board, the loss would have been properly described as caused, not by the reef or its currents, but by the storm or by the enemy or by bad seamanship, as the case might be. In fact she was compelled to enter the area of danger by the orders of the officer commanding the escort, which she had neither the right nor the power to disobey; and I think the true conclusion is that those orders were the direct and determining cause of her loss. It is contended that, even if this be so, it does not follow that the loss was a consequence of warlike operations, as the giving of an order cannot in itself be an operation. Perhaps it cannot, if the order stands alone. But in the present case the orders were a part of the convoying operation which included the choice of the route, the setting of the course, and the precautions taken on the voyage; and I do not think that the transaction can be split up and treated as in part an operation and in part something other than an operation. It was the duty of the commanding officer, for the protection both of the



warships under his command and of the merchant vessels under his care, to direct the course of the convoy as he thought best; and in doing so he was but carrying out the operation with which he was charged. In my opinion, therefore, the loss was a consequence of warlike operations within the meaning of the war risk policy."

*The Ardgantock, Attorney General v. Ard Coasters* (1921), 2 A. C., 141.

*The Richard de Larrinaga, Liverpool v. Marine Underwriters* (1921), 2 A. C., 141.

These two cases were likewise decided together in the House of Lords. *The Ardgantock*, with an ordinary merchant cargo, was proceeding northerly at night in the North Sea without lights, under Admiralty instructions. His Majesty's warship "Tartar" was patrolling in the same waters and proceeding on an opposite and parallel course to *The Ardgantock*. No collision would have occurred except for the fact that the "Tartar" reached the end of her particular patrol and turned, quite by accident, at the moment she was passing *The Ardgantock*, and as neither ship saw the other in time to avoid collision, the "Tartar" struck *The Ardgantock* amidships and sank her. The House of Lords held that this was a war loss on the ground that the "Tartar" was engaged in a warlike operation which was the proximate cause of the disaster.

*The Richard de Larrinaga* was sailing in convoy with an ordinary merchant cargo. His Majesty's warship "Devonshire" was proceeding on a voyage to pick up a convoy of merchant vessels at a rendezvous from which she was to act as part of the escort. Owing to the absence of lights, the two ships did not see each other, and came into collision. At the time, the "Devonshire" was not patrolling or performing any warlike function



except that she was on her way to join the convoy as stated. The House of Lords held that the loss was a war loss, on the ground that the "Devonshire" was engaged in a warlike operation.

*The Bonvilston and Geelong (Commonwealth Shipping Representative v. Peninsular & Oriental Branch Service)* (1923), A. C. 191; 39 T. L. R., 133. *The Geelong* was carrying a general cargo from Port Said to Gibraltar for orders and proceeding as usual at night at full speed without lights. *The Bonvilston* was carrying ambulance wagons and other government stores from Mudros, the advance base for the Gallipoli campaign, back to Alexandria, which was also a war base. The House of Lords held that *The Bonvilston* was engaged in a warlike operation and, therefore, the loss was a war loss. Lord Sumner used this very contradictory argument, 39 T. L. R., at page 137 [1923], A. C., at page 208:

"Had this case been the first of its class to be decided, instead of being the latest, I can understand that some difficulty might have been felt in saying that the operation was warlike, for in itself it was peaceable enough. It was unaggressive; it was unobtrusive, not to say furtive; and the *Bonvilston* would have behaved in exactly the same way, if she had been carrying a purely commercial cargo between exclusively mercantile ports. The difficulty is to distinguish this case, if not from previous decisions, for none quite cover the point, at least from *dicta* more or less closely involved in them."

*The Warilda* (1923), A. C., 292; 39 T. L. R., 333.

*The Warilda* was carrying wounded soldiers from Havre to Southampton, and, in view of the known



German method of sinking hospital ships, she was operating at full speed, without lights and without distinguishing marks. She came into collision with the steamship "Petingaudet" which was carrying an ordinary mercantile cargo of coke. The Courts found that the actual collision was due to an error in navigation by the commander of *The Warilda*. The House of Lords held that *The Warilda* was engaged in a warlike operation and that the loss was due to that operation, and it was immaterial whether it was being skillfully or negligently conducted. On the subject of negligence, Lord Sumner said, 39 T. L. R., at page 336:

"I believe the whole key to these problems is to be found by remembering that negligence is directly material in collision actions, when the question is how to attribute blame to persons, but is only evidentiary in insurance actions, where the question is whether the event has happened which entitles the assured to be indemnified."

There have been a large number of decisions of the inferior Courts in England dealing with the same problem—some of which are difficult to reconcile. They are substantially all referred to in the opinion of Lord Sumner in *The Warilda*, 39 T. L. R., at page 336 [1923], A. C., at page 302. It is believed, however, that the above summary is a fair statement of the English law as laid down by the Court of last resort.

With all possible respect to the learned Lords, it is submitted that the course of these decisions shows too narrow a course of reasoning. They have made distinctions which fall little short of grotesque. This is illustrated by the following results under the English decisions:

If a merchant ship in convoy comes into collision with another merchant ship, either in or outside the



convoy (no negligence being involved), the loss falls upon marine underwriters, but if the collision is with one of the warships escorting the convoy, the loss falls on the war risk underwriters, even though no hostile attack is involved and though it may be the purest accident that determines which ship is struck. This is the necessary result of saying that in a convoy the escorting warships are engaged in a warlike operation, but that the merchant ships are not engaged in a warlike operation. ("The warships are engaged in the warlike operation of protecting non-combatant vessels from the enemy. The merchant vessels are engaged in the peace-like operation of conveying merchandise by sea. The sheep are not the shepherd, and are not engaged in the operation of shepherding," per Atkin, L. J., in the *Matiana* (1919), 2 K. B., 690, quoted several times with approval in the *Matiana* (1921), A. C., at pp. 118, 121.)

If two ships (whether privately operated or under requisition) traveling at night at full speed, without lights, in accordance with Admiralty instructions, come into collision, without either being at fault, then

(1) If both of them are carrying ordinary commercial cargoes, the loss falls upon the marine underwriters (*The Petersham* (1921), 1 A. C., 99); but

(2) If either of the ships is carrying ambulance wagons and government stores to a war base (even as far away from actual hostilities as Alexandria, Egypt) then the loss falls upon war risk underwriters (*The Bonvilston* (1923), A. C., 191).

(3) And this is so even though the character of the cargo does not in any way affect the navigation of the vessels (see Lord Sumner's remarks in *The Bonvilston* (1923), A. C., at page 208, quoted above).



If a merchant ship carrying a commercial cargo comes into collision with a warship, then

(1) If both ships are at fault, or if neither is at fault, or if the warship alone is at fault, the loss falls upon war risk underwriters (*The Ardgantock* (1921), 2 A. C., 141; *The Warilda* (1923), A. C., 292) even though the warship may not be actually performing any naval duty but is merely proceeding to some designated port where she intends to take up some naval operation, such as escorting a convoy (*The Richard de Larinaga* (1921), 2 A. C., 141);

(2) But if the merchant ship alone is negligent, then the loss falls on the marine underwriters (*Charente Steamship Co. v. Director of Transports*, 38 T. L. R., 148, 149, 434, referred to with approval (1923), A. C., at page 304.

It is believed that the above distinctions disregard the real substance of the issues. It is undoubtedly the intent of all parties that marine underwriters during war shall continue to bear the same risks that they bore in times of peace, and that the new risks brought about by war, namely, those resulting from (in the language of the policy), "acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations," are specially insured at a premium vastly in excess of the marine premium. It is submitted that this plain intent is wholly defeated by a refinement, such as making the character of the cargo of either of the vessels determine upon which set of underwriters the loss will fall, or treating a collision with escorting warships as falling upon a different set of underwriters from a collision with one of the escorted ships. The proper test is to look at the efficient, dominating, or proximate cause. Was the collision between the "Napoli"



and the "Lamington" the result of the ordinary causes of collision, such as faulty navigation, fog, neglect of sailing rules, etc., or was it, in its essence, the result of the act of the naval authorities in sending two great fleets of ships, in close formation, showing no lights, on courses which met, without warning either fleet of the impending approach of the other? Lord Wrenbury expressed the same thought in these words (1921), 1 A. C., at page 135:

"If the operation relied upon as a warlike operation is one which creates no new risk, but only aggravates or increases an existing maritime risk by removing something which, but for the war, would have been a safeguard against the risk, then the risk is not a war risk. But if the peril be directly due to hostile action, it is a war risk."

Can it be doubted that the naval authorities by their handling of the convoys created a new risk, as part of the general plan for prosecuting hostilities, and that it was this new risk that was the proximate cause of the collision?

While not directly in point, the following cases in the Circuit Court of Appeals are suggestive in this connection:

*The Canadia*, *Muller v. Globe and Rutgers*,  
246 Fed., 759; (C. C. A. 2nd Ct.);  
*The Llama*, *United States v. Standard Oil Co.*, 291 Fed. 1; (1923 A. M. C. 863).

In each of these cases a merchant vessel had been stopped by a British patrol, a prize crew had been put on board, and the vessel had been directed to proceed to Kirkwall for examination by the British authorities. While proceeding toward Kirkwall, both ships stranded



and were lost. In the case of "The Canada," it was found, as a fact, that the navigation of the ship was directed by the British Naval Prize Officer; while in "The Llama" this fact was disputed, and the lower courts differed on the point. All the judges in both cases, however, seem to have concurred in the view that if the navigation of the vessel was directed by the British Naval Prize Officer on board, the loss would be a war risk loss. A writ of certiorari has been granted by this Court, at the present term, in the case of "The Llama."

## POINT II.

**Merchant ships sailing in convoy are engaged in a warlike operation, under American law.**

The Supreme Court of the United States has already considered the status of merchant ships under belligerent convoy and has reached a conclusion in accord with the views expressed by Mr. Justice Bailhache and Lord Shaw, and against those of the majority judges in the House of Lords.

In the case of *The Atalanta*, 3 Wheaton 409, this Court held that a neutral cargo, found on board an armed enemy's vessel, is not liable to condemnation as prize of war. Mr. Justice Johnson, however, in a very carefully considered opinion, drew a distinction between the case of neutral cargo shipped on an armed enemy's vessel, and the case of a merchant vessel which accepts the protection of a belligerent convoy. Mr. Justice Johnson said (p. 423):

*"A convoy is an association for a hostile object; in undertaking it, a nation spreads over the*



merchant vessel an immunity from search, which belongs only to a national ship; and *by joining a convoy, every individual ship puts off her pacific character, and undertakes for the discharge of duties which belong only to the military marine,* and adds to the numerical, if not to the real, strength of the convoy. \* \* \* To elucidate this idea, let us suppose the case of an individual, who voluntarily fills up the ranks of an enemy, or of one who only enters upon the discharge of those duties in war, which would otherwise take men from the ranks; and the reason will be obvious, why he should be treated as a prisoner of war, and involved in the fate of a conquered enemy." (The italics are ours.)

This language follows the dictum in the dissenting opinion of Mr. Justice Story in *The Nereide*, 9 Cranch 388-415.

Mr. Justice Story says:

"On the whole, on this point, my judgment is, that the act of sailing under belligerent or neutral convoy is, of itself, a violation of neutrality, and the ship and cargo, if caught *in delicto*, are justly confiscable; and further, that if resistance be necessary, as in my opinion it is not, to perfect the offense, still, that the resistance of the convoy is, to all purposes, the resistance of the associated fleet."

The language above quoted from both *The Atalanta* and *The Nereide*, was dictum, but it has been adopted as the law of this country.

In *The Ship Galen v. The United States* (37 Court of Claims, 89), it appeared that an American merchant ship had sailed from England under British convoy. Nine days after leaving the convoy she was captured by a French privateer. In holding that the vessel was not



subject to condemnation under the Law of Nations, in view of the fact that she had left the convoy, the Court said:

"The true reason why a vessel captured while sailing under convoy is liable to condemnation is that *she has for the time being allied herself with the enemy; she has become part of the hostile whole.* \* \* \* She is, for the time, a vessel which must be known by the company she keeps.

Figuratively speaking again, when she joins the convoy, and as long as she continues with it, she has hauled down her neutral flag and is sailing under the flag of the convoy. It is too late when she falls into the hands of her captor to run up her own flag. The right of capture (not of search) rests upon the fact that she is then a *part of a hostile force.* Mr. Justice Johnson, in *The 'Atlanta'* (3 Wheat., R., 409, 424), clearly illustrates the true ground of a vessel's liability when he likened her to a neutral citizen who enlists in the army of a belligerent and is taken prisoner of war, and who is thereby 'involved in the fate of a conquered enemy.'" (The italics are ours.)

To the same effect see *The Schooner Nancy* (27 Court of Claims, 99) and *The Black Sea Nymph* (36 Court of Claims, 369).

Mr. Woolsey, in his work on *International Law*, 4th Edition, Section 193, page 329, in discussing merchant ships which sail in convoy, says:

"Upon the whole, the intention to screen the vessels behind the enemy's guns, is so obvious, that the act must be pronounced to be a decided departure from the line of neutrality, and one which may justly entail confiscation on the offending party."



*1 Kent, Commentaries*, 4th Edition, Section 153, page 154, Part I, Lecture 7:

"The very act of sailing under the protection of a belligerent or neutral convoy, for the purpose of resisting search, is a violation of neutrality."

*Moore*, in Volume 7 of his *International Law Digest*, page 494, quotes the dictum of Mr. Justice Story in *The "Nereide"* (*supra*), as stating the law of this country at the present time, in regard to the status of merchant ships in convoy.

### POINT III.

**There is no commercial necessity requiring the American courts to follow the British decision.**

The present is not a case in which the English courts have established a rule of law upon which underwriters have acted and which the American courts are now asked not to follow. The English rule was established in the cases of "*The Petersham*" and "*The Matiana*", which were not finally determined until 1921. The English test as to whether a loss falls upon marine or war risk underwriters is, therefore, *ex post facto*, having been created since the Armistice, and the American courts are just as free as the British courts were to determine the question for themselves. As the decisions of the House of Lords in those cases were quite at variance with the decision in "*The St. Oswald*", the only decision in the Court of Appeals prior to the Armistice, any underwriter who acted upon the law as laid down in "*The St. Oswald*" would find his calculations upset just as much in England as in the United States.



It is admitted that uniformity of decision on commercial matters between the courts of the United States and Great Britain is desirable. We believe, however, that this Court has never allowed this desirability to induce it to adopt in this country a rule of law which seemed to this Court to be erroneous simply because the rule had been adopted by the English courts.

This is particularly true in the present case because the law of the United States already differs from the law of England on two very material points.

1. Merchant ships in convoy are regarded in this country as participating in a war-like operation (see Point II above).

2. The rule as to what constitutes a war risk is substantially different in this country. On this point see "*The Kattenturm*" (*Becker Gray & Co. v. London Assurance Corporation*) (1918) A. C. 101. In that case "*The Kattenturm*", a German merchant ship, sailed from the Far East in July, 1914, and upon the outbreak of war found herself in the Mediterranean. Her master sailed her to Messina, which was then a neutral port, because he feared that if he attempted to pursue his voyage, he would be captured by the British before he could reach a German port. The House of Lords held that no loss could be recovered from war risk underwriters.

Lord Dunedin frankly admitted that the decision was at variance with American law, saying [1918] A. C., 101, at p. 107:

"If there were no decisions on the point, and the expression 'men-of-war, enemies and restraint of princes,' as used in a policy of insurance, had



to be considered for the first time, it might not be difficult to say that the adventure in this case was frustrated by the outbreak of war and, that being so, to hold that it fell within the words as above. This indeed is the result at which the jurists of the Continent and of America have arrived. Thus Phillips on Insurance (c. 13, sec. X, par. 1115), after stating the question 'Whether a loss consequent upon the imminency of a capture, arrest, restraint, or detention, is within the risk assumed by insurance against such perils,' cites Emerigon and other foreign jurists, and pronounces the correct rule to be as follows: 'Where, after the risk has begun, the voyage is inevitably defeated by blockade, or interdiction at the port of departure, or destination, or by a hostile fleet being in the way, rendering the proceeding upon it utterly impracticable, or capture or seizure so extremely probable that proceeding would be inexcusable, the risk continues till the vessel has arrived at another port of discharge adopted instead of that originally intended; and also that an assured on the cargo has a right to abandon.'

The English authorities have not adopted this rule."

and the difference is also admitted by Lord Sumner (v. 116) with whose opinion Lord Atkinson and Lord Wrenbury concurred.

It must also be remembered that the policies involved in the present case were issued by an insurance company incorporated under the laws of the State of New York, to an assured incorporated under the same laws (p. 1) and covered a voyage from New York to Genoa (p. 2), and that the policy upon which this suit is brought (as well as the marine policy issued by the petitioner) were executed in New York (Exhibits A, AA and B following p. 6). If we are right in thinking that the English courts have reached an erroneous conclusion, it is submitted that the rights of American underwriters



under purely American contracts should not be wrongly determined merely in the interest of uniformity on the theory that uniformity of error is better than at least partial justice.

Respectfully submitted October, 1923.

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# SUPREME COURT OF THE UNITED STATES

QUEEN INSURANCE COMPANY OF AMERICA,  
Petitioner-Libellant,

AGAINST

THE GLOBE & RUTGERS FIRE INSURANCE  
COMPANY,

Respondent.

OCTOBER TERM,  
1923

No. 116

## BRIEF FOR RESPONDENT

### Statement of the Case

This is a writ of certiorari in review of the affirmance by the Circuit Court of Appeals for the Second Circuit of a final decree of the United States District Court for the Southern District of New York, dismissing the libel. The suit arises out of the loss of certain cargo shipped on board the Italian S. S. *Napoli*, one of a convoy of cargo vessels proceeding from Gibraltar to Genoa, which collided with the *Lamington*, one of another convoy of similar vessels proceeding from Genoa to Gibraltar. The cargo was covered both by a "marine" policy issued by the libellant and by a "war risk" policy issued by the respondent. Each underwriter by agreement, and without prejudice, paid the insured one-half the amount to which he was entitled. The libellant, having succeeded



to the rights of the cargo owner, brought this suit against the war risk underwriter to recover as of right the amount not already advanced by the respondent. The case was tried before Hough, *C. J.*, who dismissed the libel, on the ground that the collision was caused, not by hostilities or warlike operations or consequences thereof, but by negligence, and that the loss must fall upon the marine underwriters (Opinion, fols. 243-269 of the Record; final decree, fols. 270-1). The decree of the District Court was unanimously affirmed by the Circuit Court of Appeals (Record, fols. 278-296).

### Statement of Facts

On June 30, 1918, the Italian steamship *Napoli*, bound from New York to Genoa, left Gibraltar in a convoy of about twenty vessels. The convoy was arranged in three ranks or tiers. In the first tier there were seven ships, and a smaller number in the second and third. The *Napoli* was the middle ship in the first tier.

The convoy was escorted by six small vessels of the British, Italian and American Navies under command of Captain Ryan of the British Navy. The navigation of the convoy was entrusted to the convoy commodore, Commander Ignasio of the Italian Navy, aboard the *Napoli*. He was subject, however, to the orders of Captain Ryan, as the senior naval officer present.

The vessels were routed to pass through certain designated positions until they reached 42° 58' N. and 7° 50' E., the Genoa rendezvous, from which position they were to proceed according to instructions from Genoa, which,



so far as appears, were never given. Owing to exceptionally fine weather and smooth sea on the evening of July 4, 1918, the convoy was nearly twenty-four hours ahead of its schedule. At 8 P. M. its position was 42° 40' N. 7° 48' E.

On the morning of July 4, 1918, a convoy of similar vessels left Genoa for Gibraltar. This convoy was composed of seventeen vessels in three tiers. There were eight vessels in the first tier, either five or six in the second, and three in the third. The commodore ship was the *Ansoldo III*, which was the fourth vessel in the first tier (counting from port to starboard). She was followed by the *Plymouth* in the second tier; the *Lamington*, a British vessel, was in the same tier on her port side.

This convoy was commanded by Rear Admiral Siccardi, of the Italian Navy, aboard the *Ansoldo III*. As he was the senior naval officer present, his authority also extended to the five escorting naval vessels. These escorting vessels were operating on the flanks and astern, like those escorting the eastbound convoy. No orders to pursue fixed courses were given this fleet; after forming, it was merely to take "courses according to the signal of the Commodore".

Vessels in each tier were expected to remain (from beam to beam) about 500 yards apart; the distance between tiers (fore and aft) was about 600 yards, save that when the convoy was zigzagging the distance was lengthened to about 800 yards. These are the distances for the eastbound vessels; those for the westbound were slightly shorter. Thus the eastbound convoy presented a front from the port to the starboard escort (the escorts' positions were 400 yards off the flanks) of somewhat



less than two nautical miles; the westbound convoy somewhat over that distance.

The vessels were not required by any governmental authority to sail in convoy, although it is clear that they would have incurred greater risk by going alone. Hence the custom of going in convoy was almost universal. If a vessel joined a convoy, it was required to conform to instructions as to courses and management given by competent naval authorities. These instructions came from shore or station authority at either end of the Gibraltar-Genoa line; from the senior naval officer present with the convoy, who enforced the general orders and exercised his own judgment in departing from them in details if necessary; and from the commodore of the convoy, who carried his flag on a merchantman and sought to keep the other cargo boats in formation, regulating the speed and other details pertaining to their navigation. All vessels were expected to keep their lights screened, but ready for instant exhibition.

The convoy proceeded without incident until about 7 P. M. of July 4th, when the *Merida*, a cargo vessel in the West-bound convoy, was torpedoed. The fleet immediately began to zigzag, but the base course does not seem to have been changed until 8:30 P. M., when it was set at  $247^{\circ}$  true, *i. e.*, about W. S. W., in accordance with directions given before the attack. At 10:30 P. M. the course was changed to  $261^{\circ}$  true, *i. e.*, about W. by S., and maintained until the convoys met.

In these circumstances the convoys met about midnight of July 4 midway between northeastern Corsica and France, a passage between 95 and 100 miles wide. As the convoys, upwards of thirty-five vessels with their



accompanying escorts, divided into two approximately equal fleets, approached, the speed of the westbound convoy was 7.3 knots an hour and that of the eastbound about the same. The leading tier of each convoy picked up the loom of vessels in the other at a distance of about three-quarters of a nautical mile, each thinking the other was on an opposite course. Both immediately turned on their navigating lights.

Their courses and speeds were such that, if maintained, there would have been a collision between the *Napoli* and the *Ansoldo III*. This was avoided by the vessels passing port to port, each porting her helm. Most of the vessels slowed to steerageway, held their courses as closely as possible, and passed down through the lanes between the fore and aft columns of ships, avoiding collision. The *Napoli*, however, after porting did not straighten up on her course, but stopped directly in the path of the *Lamington*, which was traveling from 500 to 800 yards on the port quarter of the *Ansoldo III*. The *Lamington* maintained her speed of at least six knots until the collision. The *Lamington* struck the *Napoli* on the port side almost at right angles, sinking her.

The District Court's findings of fact with respect to the navigation of the convoys, which have been summarized in the foregoing statement, will be found at folios 246-257 of the Record.

Considerable difficulty was experienced in ascertaining the facts of the collision. The parties united in seeking information, but the naval authorities of Great Britain and Italy refused assistance. Hence the evidence consists of logs and statements from such of the escorting vessels as were of the United States Navy, affidavits



or depositions from officers and men of the *Napoli* given in legal or administrative proceedings, and opinions rendered therein in Italy and England, together with excerpts from the manifest of the *Napoli*—all of which were submitted at the trial and admitted by stipulation (Record, pp. 24-7).

The cargo, the loss of which forms the subject of this suit, was protected against marine risks by libellant's so-called "marine policy" and against war risk by respondent's "war risk" policy. The policies did not, however, supplement one another. The assumption clause in respondent's war risk policy is:

"It is agreed that this insurance covers only the risk of capture, seizure, or destruction, or damage, by men-of-war, by letters of marque, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations" (Exhibit B, Record, p. 14).

The f. c. and s. clause in petitioner's marine policy is:

"Warranted by the assured free from loss or expense arising from capture, seizure, restraint, detention or destruction and the consequences thereof or of any attempt thereat, and also from all consequences of riots, insurrections, hostilities or warlike operations, whether before or after declaration of war, and whether lawful or unlawful, and whether by the act of any belligerent nations, or by governments of seceding or revolting states, or by unauthorized or lawless persons therein, or otherwise" (Exhibit AA, Record, p. 13).



## ARGUMENT

### I

#### Preliminary considerations

##### 1. Difference between the insurance clauses.

It is necessary to consider, at the outset, the phraseology of the policy in suit, for whatever general principles may be applied there can be no liability except upon a particular policy. According to uniform English insurance practice the language of the war risk policy is the counterpart of the f. c. and s. clause in the marine policy, i. e., the former assumes and the latter excludes "all consequences of hostilities or warlike operations". It will be observed that while the f. c. and s. clause in the libellant's marine policy excludes "all consequences of hostilities or warlike operations", the respondent's war-risk policy covers "acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations". Certainly the respondent's war-risk clause is no broader than the libellant's marine policy with its f. c. and s. warranty; it is quite clear that it is narrower.

##### (a) Effect of the words "all consequences".

If, however, it be taken as equivalent to "all consequences of hostilities or warlike operations", we point out that the words "all consequences" as used in this clause do not extend in any way the application of the hostilities or warlike operations to which they refer. This has been the established construction since the decision of the Court of Common Pleas in *Ionides v. Universal Marine*



*Insurance Co.*, 14 C. B. (N. S.) 259 (1863). In that case Willes, J., said:

"It has been argued that the ordinary rules of insurance law are not applicable to this policy, by reason of the words of the warranty 'all consequences of hostilities'. \* \* \* I apprehend it is a fallacy to say that a larger sense is to be given to this exception by reason of the use of the word 'consequences' than if the word used had been 'effects'. In construing the exception, we can only look to the proximate consequences of hostilities. The introduction of the word 'all' really makes no difference, for no rule of grammar is more universally applicable than this, that words general and words universal are all one. The words 'all consequences of hostilities' refer to the totality of causes, not to their sequence, or their proximity or remoteness. \* \* \* If you cannot presume the exception of loss from a consequence of hostilities to involve all consequence however remote, you are necessarily driven to say that the word 'consequences' is to be dealt with according to the ordinary rule, as meaning proximate consequences only" (pp. 289-291).

This construction has been repeatedly approved by the House of Lords.

*Andersen v. Marten*, [1908] A. C. 334, 339;

*Leyland Shipping Co. v. Norwich Union Fire*

*Insurance Society*, [1918] A. C. 350, 365;

*Britain Steamship Co. v. The King*, [1921] 1 A. C. 99, 107, 131.

As Lord Sumner said in the latter case:

"They are used to save a long enumerative description of incidents of capture, seizure or detention or of hostilities or warlike operations, as if one had said 'all forms of hostilities or warlike operations of whatever kind', and some form or kind of hostility or warlike operations must have proximately caused the loss. Things of which it can be predicted that they were caused by hostilities are not themselves causes of loss additional to hostilities,



or a new description of perils insured against, so that a remote consequence of hostilities would become a recoverable loss if proximately caused by something itself describable as a consequence of hostilities" (pp. 131, 132).

## 2. The issue and burden of proof.

The petitioner's contention is that the act of sailing in convoy without lights is in and of itself a warlike operation, and that such marine disasters as may be expected to result from such dangers are themselves the result of warlike operations. Two questions, entirely separate and distinct, are involved in this issue: (a) Were these vessels engaged in hostilities or warlike operations which could have caused the collision; and if so, but not until that be found to be so (b), was the collision the proximate consequence of such hostilities or warlike operations.

*Britain S. S. Co. v. The King*, [1921] 1 A. C. 99, 107, 109 (per Lord Cave), 127 (per Lord Sumner). And see the same case in the Court of Appeal, [1919] 2 K. B. 670.

If the first proposition be not established, the second cannot be.

Loss by collision at sea being *prima facie* a marine peril, the burden is on the petitioner to show that the loss falls upon the war-risk underwriter.

*Britain S. S. Co. v. The King*, [1921] A. C. 99, 113, 119;

*Munro Brice & Co. v. War Risks Association*, [1918] 2 K. B. 78.



On these issues the record before this Court stands thus: Circuit Judge Hough, sitting in the District Court, dismissed the libel, and in so doing was unanimously affirmed by the Circuit Court of Appeals composed of Circuit Judges Rogers, Manton and Mayer. Judge Hough found that the collision "resulted not only immediately but, in the legal sense, proximately from poor navigation on the part of both colliding vessels" (Record, fol. 256). On the question whether the navigation of merchant vessels in convoy without lights was a warlike operation, his conclusion was that "under authority to which for business purposes the courts of the United States should conform", it was not, although he indicated that his own opinion was otherwise (Record, fols. 256, 268). Accordingly, the final decree recites that his decision was "that the collision set forth in the libel was caused not by hostilities or warlike operations or consequences thereof, but by negligence, and that the loss must fall upon the marine underwriters" (Record, fols. 270, 271).

On appeal, Judge Manton, with whose conclusion Judge Rogers concurred, held that the colliding vessels were not engaged in a warlike operation, but that the proximate cause of the loss was faulty navigation (Record, fols. 284-292). Judge Mayer, concurring in a separate opinion, held that "if the District Court was right in ascribing fault to each vessel, yet such fault must be regarded as having been committed *in extremis*". On the question of warlike operation he concurred with Judge Hough, both in his personal opinion and in his decision that the commercial necessity of uniformity required the court to follow the established English doctrine (Record, fols. 293-295). Inasmuch as



Judge Rogers concurred with Judge Manton rather than with Judge Mayer, it is fair to assume that he did not agree with Judge Mayer on the only point in which Judge Mayer differed from both Judge Hough and Judge Manton. The result, therefore, is that of the four judges who have agreed in dismissing the libel, three concurred in the conclusion that the proximate cause of the collision was negligent navigation.

## II

### **The vessels were not engaged in hostilities or warlike operations.**

#### **1. Construction of the terms "hostilities" and "warlike operations".**

As construed by the English courts, the term "hostilities" connotes the idea of belligerents, and is used to describe actual operations, offensive and defensive, in the conduct of war. The expression "warlike operations" is said to have been added in 1883, in consequence of the operations of the British fleet at Alexandria against persons who were in rebellion against a friendly Power, in order to cover cases where similar acts were done before the actual outbreak of war. In effect, at all events, the addition has somewhat extended the category of acts referred to, even where war is in progress. But all the cases agree that the clause is not to be extended to mean all consequences of the existence of a state of war. The phrase is "warlike operations", not "operations in time of war". It does not include even all operations for the purposes of war. It may be said to include all those



operations of a belligerent which form part of or directly lead up to those processes of attack and defense which are of the essence of war (Lord Chancellor Cave, [1923] A. C. at p. 198).

"If the operation relied upon as a warlike operation", said Lord Wrenbury in *Britain Steamship Co. v. The King*, [1921] 1 A. C. 99, 135, "is one which creates no new risk, but only aggravates or increases an existing maritime risk by removing something which, but for the war, would have been a safeguard against the risk, then the risk is not a war risk. But if the peril be directly due to hostile action, it is a war risk. Of the former of these, *Ionides* is an illustration. By reason of the war and for warlike purposes a light had been removed. Had it still been burning the master of the *Linwood* would have had the necessary warning to escape the danger into which he ran. The war did not create the risk but increased it. The cause of the loss was in going ashore. The loss was not a war risk. But, on the other hand, the vessel which tries to ram that which she believes to be an enemy vessel, the vessel which is rammed by a destroyer which is steaming in the dark without lights for a warlike purpose and which necessarily for the due performance of that duty turns across the route which a vessel would normally and properly take in that neighborhood, and the vessel which is lost by striking a mine, is lost by a new risk originating in and operative by reason of war."

This distinction between a cause and a condition has long been thoroughly established in English and American law. In *Ionides v. Universal Marine Insurance Co.*, 14 C. B. (N. S.), 259, to which Lord Wrenbury refers, cargo on board the ship *Linwood* was insured by a policy warranted free from all consequences of hostilities. On her way from New Orleans to New York, in 1861, her master, being out of his reckoning, and supposing that he had passed Cape Hatteras, instead of keeping his



course N. N. E., changed it to W., and consequently went ashore about ten miles south of the Cape. Until the outbreak of the Civil War a light had always been maintained at Cape Hatteras, but this light had been extinguished by the Confederate military authorities for hostile purposes. The Court of Common Pleas held that the proximate cause of the loss was a peril of the sea, and that the underwriter was therefore liable. We quote the reasoning of Byles, *J.*:

"The first question is, was the vessel lost through the absence of the light at Cape Hatteras? In order to raise that question, we must assume that, if the light had been there when the captain of the *Linwood* altered the course of his vessel on the evening of the 17th of July, he would have seen it, and, having seen and recognized it, would have had time to turn about and save the vessel. \* \* \* Then, what were the three things which combined to cause the loss,—assuming that the captain would have seen the light if there, and so would have been warned in time to save the vessel? First, the original meritorious cause (and in popular language *the cause* of the loss) was the captain's being out of his reckoning. He was some fifty miles to the westward of his course, without knowing it. The absence of the light was, as I before observed, merely the absence of an extrinsic saving power. Could that be said to be the cause of the ship's destruction? Suppose a man throws himself into the *Serpentine*, and the means of rescuing him are not at hand, and he is drowned. Could it be said in that case that the man was drowned because of the absence of the saving power? Apply that here. The absence of the light at Cape Hatteras was but the absence of a warning, leaving the proximate and immediate cause of the loss, the miscalculation of the captain, which is plainly a loss by the perils of the sea" (pp. 295, 296).

In *William France Fenwick & Co. v. North of England Assn.*, 33 Times L. R. 437, where a vessel which struck the submerged wreck of a ship which had been



sunk a few hours earlier by an enemy submarine, the loss was held to be due to a marine risk. "All that can be said in the plaintiff's favor in this case is that but for hostilities this loss would not have been sustained; but the rule in insurance law is so rigid that that statement does not carry the plaintiff far enough" (per Bailhache, J.).

In *Muller v. Globe & Rutgers Fire Insurance Co.*, 246 Fed. Rep. 759, Judge Hough himself, speaking for the Circuit Court of Appeals for the Second Circuit, in a case arising out of the late war, said :

"We fully recognize it as a rule of law, supported by reason and the authorities quoted [among them the *Ionides* case], that a mere increase of sea peril, by removal for belligerent purposes, of all or any aids to navigation, does not *per se* afford ground for recovery under such war risk as this, in respect of a loss due to absence of accustomed assistance. Such act indeed, no more than restores the dangers of the seas to their normal."

The principle has often been applied by our courts. *Commercial Union Assurance Co. v. Pacific Union Club*, 169 Fed. 776; *Brown v. St. Nicholas Insurance Co.*, 61 N. Y. 332. In the former case a recovery was sustained on a fire policy with an exception against loss caused directly or indirectly by earthquake, although an earthquake on the preceding day had disrupted the city's water mains and prevented the use of the water supply in extinguishing the fire. "As well might it be said that the Company meant that it should not be liable for any loss or damage by fire which could be prevented by the use of the fire department of the City of San Francisco in the event that its use be prevented by the destruction of its



apparatus, or the killing or disabling of its men or horses, by an earthquake shock."

As applied to the subject-matter in issue by the House of Lords the reasoning is as follows:

"The *Petersham* was lost by collision by reason of navigation in the dark without lights. The risk of collision at night is an ordinary maritime risk. It was aggravated by the removal of the protection of the usual lights of navigation. This is governed by the principle of *Ionides*, which I think was right and which in fact counsel have not attacked. The *Matiana* was lost by going on a reef when sailing in convoy. To sail in convoy is to increase the every-day maritime risk of collision whether with a fixed object or with another vessel, for vessels in a convoy are necessarily not far apart. But there was no new risk. The abandonment of navigation lights in the case of the *Petersham* by way of protection against attack by submarine, the sailing in convoy in the case of the *Matiana* by way of protection against the like attack, are in principle similar. They are devices adopted by way of precaution in time of war which involve greater danger from maritime risks, which exist whether there is war or not. Their object is to give greater security to peaceful operations. It has been argued that to sail in convoy is a warlike operation. It is an operation adopted in time of war, but this does not, I think, make it a warlike operation. Not offence only but defence also may, no doubt, be a warlike operation, but a precautionary measure is not in itself a measure of defence. If it becomes necessary to use the weapon of precaution, no doubt a defence may commence. Thus, if here submarines had been sighted and the escorting vessel had ordered a notoriously dangerous course in order to avoid a peril of war—namely, submarine attack—and in consequence a vessel had gone on the rocks, the case would, I think, have been different."

*Britain Steamship Co. v. The King*, [1921] 1 A.  
C. 99, 135, 136 (per Lord Wrenbury).



## 2. The vessels were not engaged in hostilities.

"Hostilities" can have no application to this case. The word means hostile acts between enemies, and "consequences of hostilities" does not mean a consequence of war going on. Whether regarded as hostilities or a war-like operation, the submarine attack upon the westbound convoy five hours prior to the collision has no bearing on the issue. The only consequence of that attack was a change of course on the part of the convoy. But the convoy had resumed its prescribed course before the collision, at which time it was proceeding in all respects precisely as it would had there been no submarine attack. In other words, as the District Judge found:

"It is not believed that the torpedoing of a vessel in the westbound convoy five hours before meeting the east-bound fleet affected this matter at all, or if it did, it was pure ill luck. For all that the naval or navigating authorities did or expected to do (so far as this record shows) it was chance, and no more, whether the senior naval officers of the respective fleets did or did not steer courses that would intersect with those of the other convoy. And with each officer navigating (so far as shown) absolutely for himself, it was quite natural that each would steer for the middle of the passageway between Corsica and France, and that is exactly where they met. The one fairly certain result of torpedoing *Merida* (vessel T. B. westbound) was to slow up the convoy so far as getting toward Gibraltar was concerned. It is rather less than thirty nautical miles from the scene of *Merida's* mischance to that of collision, and it required five hours to make that distance. If the speed was anything over six miles (and estimates vary from 7.3 to 8.5), there was a great deal of 'zig-zagging' done; but all without any reference to the other convoy" (Record, fol. 257).



At the time of the submarine attack the course of the convoy was altered four points to the right, but later on, and before the convoys met, it was again altered four points to the left. Although it does not appear how long the convoy stood on these courses (Record, fols. 194-5), presumably the later change neutralized the former. There is no proof to the contrary. The commander of the *Yankton* supposed the convoy was off the course laid down before the attack because it was the practice to change courses frequently when submarines were in the vicinity. But he was unable to say this was so, since the *Yankton's* log shows no 8 P. M. position (Record, fol. 195). The purely speculative foundation for its assignment of error "in failing to find that the westbound convoy was off its course to the southward at the time of the collision as a result of the submarine attack" (Record, fol. 275), is disclosed by petitioner's brief:

"Just exactly what these changes of course were, we have not been able to ascertain because the *Yankton* was off her station and did not get all the messages (Burns, Record, fol. 195), and the communication log of the *Yankton* shows some signals which we have been unable to translate, as they are stated by Captain Burns (not in the Record) to have been given in typewritten code supplied specially for this voyage but not now available" (Petitioner's Brief, p. 11).

It is difficult to understand the materiality of this, considering that after the attack the convoy's course was twice changed to courses previously laid down. Regarding this Captain Burns testified:

"Q. Had the convoy during the afternoon received from the commodore any instructions as to changes of course at night? A. They did.



"Q. Will you tell us what those orders were, giving the letter signals that were received and the translation of them as far as you can? A. During the afternoon the commodore signaled that the course would be changed at 8:30 to 247° true, that course would be changed at 10:30 to 261° true, and that course would be changed at 1:30 A. M. July 5th to 251° true.

"Q. Were these orders carried out? A. They were" (Record, fol. 196).

There is nothing to show that these changes had anything to do with the presence of enemy submarines, much less with the attack.

Petitioner relies upon paragraph 5 of the Admiralty's letter of September 10, 1920 (Record, fol. 152). It is a mere conclusion, unsupported by any evidence, and there is no indication that the writer had any personal knowledge of the facts. Indeed, it is not clear to which convoy reference is made. Moreover, it is difficult to reconcile the contention with petitioner's express admission at the trial that the courses would have crossed in any event (Record, fol. 241).

### 3. The vessels were not engaged in a warlike operation.

This brings us to the inquiry whether there was a warlike operation in progress at the time of the collision. The petitioner relies upon three circumstances in support of its affirmative contention: (a) that the vessels were sailing without lights, (b) that they were proceeding in convoy, and (c) that the *Napoli* carried cargo destined for warlike uses. The respondent contends that these considerations, whether separately or conjointly considered, do not constitute a warlike operation.



**a. Sailing without lights is not a warlike operation.**

It is well settled in English law that sailing without lights does not constitute a warlike operation. As Rowlatt, *J.*, said in *Atlantic Transport Co. v. Director of Transports*, 38 Times L. R. 160, some confusion arose in the English courts of first instance in consequence of the failure to observe the manner in which the general subject was first presented in the *St. Oswald* case (*British & Foreign S. S. Co. v. The King*, [1917] 2 K. B. 769). That case involved a collision between a French warship and a requisitioned vessel, the *St. Oswald*, engaged with other vessels in the embarkation of troops from Gallipoli. The vessels were operating at full speed without lights at night in an effort to withdraw troops from a battlefield without attracting the enemy's fire. This was obviously a warlike operation apart from the question of lights; but the point was not in issue because it was expressly admitted, and the only question decided was whether the collision was its proximate consequence. Rowlatt, *J.*, was explicit:

"I have, therefore, to determine," he said, "whether the collision here was the consequence of the steaming without lights by the suppliant's ship and the *Suffren* on this night, which the Attorney General admitted was a warlike operation" (pp. 772, 773).

In the Court of Appeal, which affirmed the decision below, Scrutton, *L. J.*, said:

"I deal with the case on this admission and reserve the right to consider in any future case the exact meaning of the term 'warlike operations'."

*British & Foreign S. S. Co. v. The King*, [1918]  
2 K. B. 879, 886.



Although there was no further appeal in the *St. Oswald* case, when the issue as to warlike operations subsequently came before the Court of Appeal in the case of the *Petersham* (*Britain S. S. Co. v. The King*, [1919] 2 K. B. 670), all the judges of that court pointed out that their previous decision in the *St. Oswald* case was of no use in determining whether sailing without lights was a warlike operation. And when the House of Lords later on considered the general subject matter in reviewing the cases of the *Petersham* and the *Matiana*, reference was made to the fact that the *St. Oswald* case turned on an admission by the Crown. *Britain S. S. Co. v. The King*, [1921] A. C. 99, 128. The consequence of the failure to observe this admission was that in the first case in which the issue was presented, Roche, *J.*, considered himself bound to find, in view of the decision of the Court of Appeal in the *St. Oswald* case, that sailing without lights was a warlike operation. *Inui Gomei Kaisha v. Attolico*, Lloyds List, July 20, 1918. Inasmuch, however, as his actual decision was that the collision involved was proximately caused by negligent navigation, not by warlike operation, his views on sailing without lights were *obiter* (see the observation by Bailhache, *J.*, in [1919], 1 K. B. at p. 582).

The English courts have uniformly held that sailing without lights was not a warlike operation. The issue first came before Bailhache, *J.*, in the case of the *Petersham* (*Britain S. S. Co. vs. The King*, [1919] 1 K. B. 575), where a vessel was lost in collision.

"The question I have to answer, in all its naked simplicity," said Bailhache, *J.*, "is this: Does the mere fact that, in order to avoid the common danger of attack by



submarines, a vessel upon a non-warlike errand in obedience to Admiralty regulations sails without lights, constitute a warlike operation? In my opinion it does not, ~~indicate admission~~. In my judgment the Admiralty regulation that vessels should navigate at night without lights greatly increased the risk of navigation, but left it a marine risk \* \* \*."

This decision was unanimously approved by the Court of Appeal, [1919] 2 K. B. 670. Lord Justice Atkin's reasoning is this:

"The operation is the operation of conveying goods by sea from one commercial harbour to another. The risk of collision is an ordinary risk of such an adventure. It is true that the voyage is performed in war time and under war conditions. It is an operation in war, but not a warlike operation. Like many other peaceful operations conducted in time of war, it is conducted under different conditions to those of peace. The risks are increased; the risk of collision by sailing without lights; the risk of stranding by sailing on unaccustomed routes; the risk of foundering by difficulties in securing, when needed, necessary repairs. But to increase marine perils by reason of war is not to convert them into war perils. The warlike operation is said to be sailing without lights; I asked during argument whether, while the vessels were sailing by day, they were engaged in a warlike operation, or did they begin the warlike operation when the sun went down, and I am not conscious of having received an answer. If regard is to be had to the natural meaning of the words, it can be tested by reference to land operations. An omnibus is proceeding with dimmed lights in darkened streets in pursuance of Government orders made for the protection of a city and its inhabitants from attack by hostile aircraft; is the omnibus engaged in a warlike operation? And if by reason of the lack of light it collides with a wayfarer or another omnibus, is the resulting injury the consequence of a warlike operation? And was the wayfarer similarly engaged in a warlike operation? Lights are, in pursuance of the same order, darkened in a public building, and a visitor, by reason thereof, falls and injures himself; is he the victim of a



warlike operation? To these inquiries the sole answer of counsel was a courteous protest against the introduction of such mundane matters into the esoteric mysteries of marine insurance. I think, in the contention of the appellants, the major premise is flung far too wide" (pp. 696, 697).

This conclusion was unanimously affirmed by the House of Lords, [1921] 1 A. C. 99. Lord Sumner said:

"In showing no lights each was only doing what all ships did a few generations ago and what some ships did quite recently in unfrequented water to save a little oil. Sailing the seas even under conditions of modern maritime warfare is not in itself the same thing as traversing a battlefield on land, though even that may be done on a peaceful errand. To go ahead in the dark may be foolish or wise but it is not warlike, nor is it made warlike because what would otherwise be blameworthy is done in obedience to lawful commands. No doubt the object is to avoid being seen if the enemy is present, but if no enemy is present the act is a precaution only which fortunately is not needed. The operation of the *Petersham* and the operation of the *Serra* were in each case peaceable; neither was doing anything warlike separately, nor were they doing anything warlike together. Nor again was the operation of those who issued the order warlike, though it was performed in time of war. It did not become a warlike operation merely because its object was to baulk warlike operations on the part of the enemy" (p. 128).

**b. Sailing in convoy is not a warlike operation.**

With respect to convoys, Bailhache, J., first held in the case of the *Matiana* (*British India Steam Navigation Co. v. Green*, [1919] 1 K. B. 632), where a vessel sailing in convoy through a submarine-infested area ran upon the rocks and was lost:

"To sail with convoy is, in my opinion, a warlike operation. The assembling of the ships to be convoyed and of the men-of-war to convoy them, the voyage of the whole



flotilla, the route chosen, and the precautionary measures adopted on the voyage, must be taken together as all part of a warlike operation."

The appeal from this decision in the *Matiana* case was argued and decided with that of the *Petersham* case, both in the Court of Appeal and in the House of Lords. *Green v. British & India Steam Navigation Co.*, [1919] 2 K. B. 670; [1921] 1 A. C. 99. In the Court of Appeal the judgment of the lower court was unanimously reversed. The same considerations that applied to the absence of lights were controlling in the case of convoy.

Lord Justice Atkin said:

"Following the reasoning I have adopted in the *Petersham* case, I come to the conclusion that the *Matiana* was not engaged herself in a warlike operation. But this is not sufficient in itself to decide the case; for it was urged that at any rate the loss was a consequence of a warlike operation by the commander of the escort in controlling the course of the convoyed ships. I doubt whether the giving of an order in itself can ever be an operation. That which is done under the order constitutes the operation; and to ascertain whether such operation is warlike or not, no doubt one must look to the function of the person giving the order as well as to the nature of the order and the person or persons by whom it is to be performed. But I will assume that in giving the order when he did to take a particular course, the commander was performing a warlike operation; was the loss the consequence of it? I think that the clause should be construed in accordance with the general principles of insurance law as covering only the consequences proximately caused by hostilities or warlike operations. For this view one has the great authority of Willes, J., in *Ionides v. Universal Marine Insurance Co.*, 14 C. B. (N. S.) 259, 289, intended to be approved, I think, by Lord Halsbury in *Andersen v. Marten*, [1908] A. C. 339, 340. It seems to be unnecessary to discuss the precise words in which the necessary relation of cause and effect should be described: for the language has been finally settled in The Marine Insurance Act, 1906,



s. 55, sub-s. 1. \* \* \* In the present case the naval commander changed the course at 9.3 P. M.; at 10 P. M. the order was given to zigzag; and at 12.15 A. M. the *Matiana* struck the Keith Reef. The actual loss was caused by an ordinary sea peril, stranding. It seems to me impossible to say that the naval officer directed her on to the reef; or that her striking was the inevitable or even the probable consequence of his order. That she struck the reef was a mischance. It could not be calculated. It was not proximately caused by the order. It was precisely the kind of mischance that constitutes a marine peril when voyaging on an unknown or uncharted route. No doubt by taking the course she was ordered, she was exposed to the risk of striking the reef; but in my view the true result of the order was merely to expose the ship to a greater chance of suffering a loss from marine peril. A naval order to incur marine risks by taking a dangerous channel, by sailing in a fog-bound area, by navigating at full speed, or, as in the last case, without lights, does not proximately cause the loss, if in fact the vessel suffers loss from collision or stranding" (pp. 699-701).

The House of Lords approved the judgment of the Court of Appeal by a vote of three to two, Lords Atkinson, Sumner and Wrenbury constituting the majority, Lords Cave and Shaw dissenting. The majority judges all repudiated the notion that the vessels convoyed became identified with the ships of war protecting them.

"To sail in convoy", said Lord Wrenbury, "is to increase the everyday maritime risk of collision whether with a fixed object or with another vessel, for vessels in a convoy are necessarily not far apart. But there was no new risk. The abandonment of navigation lights in the case of the *Petersham* by way of protection against attack by submarine, the sailing in convoy in the case of the *Matiana* by way of protection against the like attack, are in principle similar. They are devices by way of precaution in time of war which involve greater danger from maritime risks, which exist whether there is war or not" (pp. 135, 136).



Lord Sumner said :

"As for the *Matiana*, she was sailing with convoy. She was bound to take her course from the senior officer of the convoy and did so, and, thanks to the set of a variable current, she came unexpectedly on to the Keith Reef. Her operation also was proceeding on her trading voyage. It is true she did so by an unusual route but the deviation was justifiable and obligatory. She found in her way a rock, submerged and unlighted, which, in itself, was a marine peril. It was a moonlight night and, if there had been any wind, she would probably have seen the break of the sea on the reef in time. As it was a still night she had no warning and she stranded. Why is such a stranding a consequence of warlike operations? *The Matiana* had to do as she was told, but she was not told to go aground either directly or indirectly. I think that the case of *The Matiana* can only be distinguished from that of *The Petersham* by dwelling on the facts, first, that she was in convoy and, second, that, in addition to general orders as to not exhibiting lights, she was under particular orders as to the course to be shaped and the stations to be kept. In brief, sailing with convoy is only sailing in company and is no more a warlike operation than sailing alone. If, for the sake of protection in case of danger, the *Matiana* had kept as close as she could to a King's ship casually encountered, she would still have been peacefully occupied. What difference is made by additional orders given *ad hoc* by the senior naval officer? It is suggested that the case is the same as if he had been on her bridge, had himself laid and directed her course and had her steered straight on to the reef. Even if it were so, I am by no means prepared to say that this would have sufficed. Not everything done by a King's ship, or a King's officer, in time of war is necessarily a warlike operation or the consequence thereof. \* \* \* It is not a case of deliberately running her aground for some purpose of war. Her course and station having been prescribed some hours before, she was in her own officers' charge, and there is no evidence to show or to suggest that the avoidance of a local obstacle in her track was not left to them, or that her orders were to keep her course, let the consequence be what it might. There is nothing to suggest that, if the rock had been



visible, she was not entitled and bound to manœuvre so as to avoid it. Her officers were not to blame, for they could not see it, but her inability to see the rock seems to me to be indistinguishable from the *Petersham's* inability to see the *Sera*; there was nothing warlike about it—the peril of it was of the seas. For the rest, an order given by an officer in company and in authority referring to a compass course does not really differ from an order given generally in Admiralty Regulations; it is a special order but it is an order to do or to refrain, like the general order as to lights. Warlike operations and hostilities generally prevailing supplied the reason for it, but even if it was a consequence of an operation of war the stranding was not its proximate consequence" (pp. 128-130).

The two minority judges were not in agreement in their reasoning. Lord Shaw was the only one of the eight judges who reviewed this judgment to take the view that the vessels under convoy, as well as those acting as convoy, were engaged in a warlike operation, [1921] 1 A. C. 124; he put it on the ground that the naval commander of the convoy was as much in control of the movements of the merchant vessel as if he had placed a naval officer on board or had the *Matiana* in tow. Lord Cave, the other minority judge in the House of Lords, took a different view:

"Nor, in my opinion, is it correct to say that the *Matiana* was herself engaged in any warlike operation. It is true that she was being convoyed by warships; but that was done for her protection against possible attack, and she herself formed no part of any attacking or defending force. In this respect I agree with Atkin, *L. J.*, who says: \* \* \* 'The sheep are not the shepherd; and are not engaged in the operation of shepherding'" (pp. 109, 110).

The conclusion in which the two minority judges agreed was that the orders of the convoy commander in



prescribing the dangerous course was the cause of the loss. Lord Cave stated the case thus:

"But, assuming this to be the case, there remains the crucial question, whether the operation of the convoying vessels was the proximate or direct cause of the loss of the *Matiana*. I think it was. The inference which I draw from the facts above stated is that the loss was the direct consequence of the orders given by the naval officer in command to take the course which he prescribed. \* \* \* In fact she was compelled to enter the area of danger by the orders of the officer commanding the escort, which she had neither the right nor the power to disobey; and I think the true conclusion is that those orders were the direct and determining cause of her loss" (p. 110).

But this Court has passed upon this very point. In *Morgan v. U. S.*, 14 Wall. 531 (more fully reported in 8 Ct. of Claims Repts. 18), it appears that the owner of a vessel had chartered her to the government during the Civil War. The vessel was manned by the owner; the Quartermaster's Department, United States Army, directed how she should be loaded and where she should go. The charterparty provided: "The war risk to be borne by the United States. The marine risk to be borne by the owners." The vessel took on board at Brazos, Texas, troops and stores for immediate transportation to New Orleans. The bar at the mouth of the harbor was difficult and dangerous; when the vessel was ready to proceed the wind was high and the water low. The quartermaster in authority at Brazos ordered a government tug to aid in taking the vessel over the bar; but she struck bottom, swung round inside the bar, and returned to her landing. The quartermaster, nevertheless, again ordered the vessel to proceed to sea. This order was given with full knowledge of the danger of crossing the bar, and



against the judgment of both the master of the vessel and the pilot; but the exigencies of the service, in the judgment of the quartermaster, required the attempt to be made. The master, under this order of the quartermaster, again attempted to go out, but the vessel struck heavily, and was damaged so much that, after discharging the troops and stores, she had to be towed to New Orleans. This Court held that the owner, not the government, must bear the loss:

"If, therefore, the stranding of the boat in going over the bar was owing to a peril of the sea, her owners, and not the government, must bear the loss. That the high wind and low stage of water were the efficient agents in producing this disaster are too plain for controversy. They were the proximate causes of it, and in obedience to the rule '*causa proxima non remota spectatur*' we cannot proceed further in order to find out whether the fact of war did not create the exigency which compelled the employment of the vessel" (p. 535).

This case was cited with approval by this Court as recently as *New Orleans-Belize Royal Mail and Central American Steamship Co. v. United States*, 239 U. S. 202, 206. We submit that it disposes completely of the ground upon which the dissent in the convoy case is based.

Two other decisions in the Federal courts afford practical illustration of effect of the presence of a naval officer on board, the analogy suggested by Lord Shaw. Where the naval officer assumes control of the vessel's navigation and strands her, the loss is caused by a war-like operation. *Muller v. Globe & Rutgers Fire Insurance Co.*, 246 Fed. 759. Where the master retains control of the navigation, stranding is a marine peril. *The Llama*, 291 Fed. 1.



The passages from the opinion of Mr. Justice Johnson in *The Atalanta*, 3 Wh. 409, and of Mr. Justice Story in *The Nereide*, 9 Cr. 388, and from the language used by the Court of Claims, upon which the petitioner relies, relate to an entirely different issue, namely, the status of neutral vessels under belligerent convoy. But the distinction between convoyed merchantmen and their escort has been recognized from the earliest days of maritime warfare; it is recognized in the definition of convoy in 13 Corpus Juris, 931. The roles of the two classes of ships are entirely different. That of the ships of war is protective and, if need be, combative; that of the merchantmen is not at all combative, and as far as the circumstances permit, is as peaceful in character as would be their enterprises in time of peace. As Lord Justice Atkin said in the *Matiana* case, [1919] 2 K. B. 670, the sheep are not the shepherd and are not engaged in the operation of shepherding.

(1) Concerning convoy courses.

It is convenient to refer, in this connection, to a point made by the petitioner with respect to convoy courses. The libel alleges that the naval authorities so laid out the courses of the two convoys that they would meet in the course of their navigation; therefore, it is claimed, the collision was the result of the convoy regulations. But this argument is completely exploded by the petitioner's express admission at the hearing that the convoys would have crossed each other's course in any event (Record, fol. 241). Moreover, Judge Hough found the fact against the petitioner.

"It is not, however, true, that either convoy or both were obliged by orders given on or before departure to



pursue fixed courses for the entire contemplated trip. The westbound vessels were merely ordered after leaving a buoy outside Genoa harbor to take 'courses according to the signal of the Commodore', on *Ansoldo III*; while the eastbound fleet was given definite courses until such time as they should reach 42.58 N. and 7.50 E., from which position, called 'Genoa Rendezvous', they were to proceed 'according to instructions from Genoa', which so far as appears were never given. This point is about 70 miles from Genoa, and the place of collision was, according to the repeated statements of *Napoli's* master 43 N., 7.58 E. In other words the *Napoli* had proceeded beyond the limit of courses antecedently laid down, and was presumably taking whatever direction was ordered by Captain Ryan, R. N., as Senior Naval officer present. This is even more true if the *Lamington's* calculation of position be accepted,—43.8 N., 7.46 E. It is therefore not true that the convoys met by reason of pursuing courses predetermined for them at the places of departure" (Record, fols. 247-248).

In other words, each convoy was navigating for itself, just as each vessel would have done had it not been in convoy. If, as the petitioner has admitted, the courses of the convoys would cross in any event, it was obviously impossible for the Allied naval authorities to have laid out their course so that they would not meet. In complete ignorance, as we are, of the reasons which led the commanders of the convoys to take the courses that were actually taken, it would be rash to attribute any fault in this respect. And at all events, the absence of regulation, in any circumstances upon which neglect could be predicated, would be merely the absence of an extrinsic saving power, as in the other features of the voyage already discussed.



c. The *Ionides* case considered.

Some observations by Judge Hough and by Judge Mayer with reference to the decision of the Court of Common Pleas in *Ionides v. Universal Marine Insurance Co.*, 14 C. B. (N. S.) 259, require attention. According to their personal views, what they characterize the spirit of the *Ionides* case—namely, that precautions during war which merely heighten the known pre-existent perils of navigation, do not change in kind such perils—if valid at all, is inapplicable to the situation which existed in the late war, during which, as Judge Hough put it:

“Commerce existed only as an adjunct to war and for the purpose of creating and maintaining armed forces to insure the economic defeat of the enemy. The *Napoli* was taking a cargo from America to Italy, and even courts may take cognizance of the fact that in June, 1918, no such cargo was a possibility that did not in the opinion of governmental representatives from at least three governments (British, Italian and American) directly assist in the task of defeating Germany. In a large sense the very act of sailing was a consequence of hostilities. In short, almost every act of the warring countries after the home-staying population was fed, clothed and sheltered, was but a manifestation of war” (Record, fols. 265, 266).

For more than two generations the *Ionides* case has been relied upon by English and American courts and by text book writers as undoubted law. It is a striking tribute to its soundness that, although often referred to by the English courts in the course of the keen litigation during recent years, over the general subject matter under consideration, no judge, nor even counsel, questioned it (See the comment by Lord Wrenbury in the *Petersham* case, [1921] 1 A. C. at p. 135). Although it does not appear to have been cited by the Supreme Court,



it was cited by the late Justice Brown, while he was a District Judge, in *Richelieu & Ohio Navigation Co. v. Boston Marine Insurance Co.*, 26 Fed. 596, 605, with the comment that it was apparently "in full accord with that of the Supreme Court in the case of *Waters v. Merchants' Louisville Insurance Co.*, 11 Pet. 213."

It is clear that the *Ionides* case involved only the application of the doctrine of proximate cause, and it has no more direct relation to the issue here than the District Judge found that *Muller v. Globe & Rutgers Fire Insurance Co.*, 246 Fed. 759, had (Record, fol. 260). Unless and until be found, hostilities or warlike operations the question of proximate cause does not arise. But where, as in the *Ionides* case, there is, on one hand, hostile action in the extinguishment of the light by Confederate troops, and, on the other hand, a marine casualty in stranding, it becomes material, in an action on a marine policy warranted free of all consequences of hostilities, to ascertain whether the proximate cause of the loss was a marine peril or hostilities. In time of war, especially in an almost world-wide war, warlike conditions are omnipresent, and in determining whether a particular loss was proximately caused by one or the other a court necessarily deals with the distinction between causes and conditions as well as proximate and remote causation. This was done in an illuminating way in the *Ionides* case; the absence of the Hatteras light was a mere condition under which the vessel navigated. In this sense it may be proper to say that the "spirit" of the *Ionides* case triumphed in the *Petersham* and *Matiana* cases.

But the extent of a condition cannot limit the appli-



cation of the principle. The universality of a condition cannot convert it into a cause. The present case is a striking illustration of the necessity of holding fast to the distinction. Once the established legal landmarks are passed, there is no stopping point short of the conclusion that "every act of the warring countries after the home-staying population was fed, clothed and sheltered, was but a manifestation of war"; that in a legal, as well as in the "large sense" (referred to by Judge Hough), "the very act of sailing was a consequence of hostilities". If indirect assistance to the successful prosecution of war is a warlike operation, every subscriber to the Liberty Loans was engaged in a warlike operation when he bought his bonds.

*d. The dominant factor is the nature, not of the cargo, but of the operation.*

Mr. Hann's affidavit (Record, fols. 232-241), deals with the nature of the cargo carried by the *Napoli*. The items selected were taken from the ship's manifest and from the shipper's export declarations, in most instances an obvious duplication. An effort was apparently made to select all cargo consigned by or to a public authority, although most of the items are otherwise colorless.

The facts with regard to the cargo of the *Napoli*, as found by the District Judge, are these:

"It is agreed that the major portion of her large cargo could fairly be described as general; but in Mr. Hann's affidavit libellants exhibit a list of cargo articles which they declare to have been 'intended for use by the Italian Government in prosecution of war'. The list is considerable in itself, but insignificant as compared with the lading of a vessel of *Napoli's* size. It is my opinion that this list contains certainly one and perhaps two articles which may be called munitions of war, to wit, certain



tubes for 'Italian 80-ft. sub-chasers', and 'Artillery case heading press'. The rest of the list is beyond question contraband, and more than conditional contraband, too, but that is all. But the goods are in my opinion no more closely allied to warlike operations or to the waging of war than was the asbestos which constituted the portion of the cargo insured by both parties to this litigation.

In the light of what is now history, it seems to me rather absurd to ground argument concerning the presence or absence of war-risk solely upon the nature of even an entire cargo, not to speak of the nature of scattered and numerically insignificant articles thereof. This because the war-risk was the same, no matter what the character of cargo. It is history that in the summer of 1918 the sea power of Germany outside the North Sea was represented solely by submarines whose object was to destroy commerce, and that meant to destroy ships, the nature of cargo was a matter of no consequence. \* \* \*

But further, upon authority, it is the nature of the operation, not the character of the cargo, which is the material thing determining the query whether the vessel is engaged in an act of hostilities or in a warlike operation (*The Larchgrove*, 36 Times L. R., 108)" (Record, fols. 258-9, 262).

This is in accordance with reason and authority. On the issue of whether a vessel is employed in a warlike operation, the primary consideration is the nature or purpose of the operation in which she is engaged. This is the test suggested by Bailhache, J., in the early case of the *Petersham*, and by McCardie, J., in the recent case of the *Inkonka* (*Harrisons, Ltd., v. Shipping Controller*, [1921] 1 K. B. 122). If a merchant ship be employed in the evacuation of troops from a battlefield, as in the *St. Oswald* case, doubtless she is engaged in a warlike operation. So if she be employed as a tender in a combatant fleet (*Hindustan S. S. Co. v. Admiralty Commissioner*, 37 Times L. R. 856), or used as an ambulance transport for the conveyance of wounded soldiers from France (*At-*



*torney General v. Adelaide Steamship Co.*, [1923] A. C. 292).

That the dominant object of the voyage controls has now been settled in England by the House of Lords. In the recent case of *Commonwealth Shipping Representative v. Peninsular and Oriental Branch Service*, [1923] A. C. 191, it appears that the steamship *Geelong*, then under requisition by the Government of the Commonwealth of Australia for transport service, while bound from Port Said to Gibraltar for orders, with a general cargo on Government account, was run into and sunk by the steamer *Bonvilston*, which was under requisition by the British Government and engaged in carrying ambulance wagons and other Governmental stores from one war base to another. Both vessels were proceeding, in accordance with Admiralty instructions, at full speed and without showing any lights. The House of Lords held that while the *Geelong* was not engaged in a warlike operation the *Bonvilston* was, and the loss was a war risk. Lord Chancellor Cave said:

"When the arbitrator found that the *Bonvilston* was under requisition by the British Government, and was 'carrying ambulance wagons and other Government stores from one war base (Mudros) to another war base (Alexandria)', he must assuredly have intended the court to understand that the cargo consisted of war material of the above character which was being transported from one war base—that is to say, from a point behind a fighting front from which the forces engaged on that front might be fed with men, munitions and supplies—to another war base for war purposes" (p. 198).

That is to say, the combative purpose of the transportation was the decisive factor. And his opinion was that the expression "warlike operation" "includes all those op-



erations of a belligerent Power or its agents which form part of or directly lead up to those processes of attack and defense which are of the essence of war." On the other hand, he said:

"Plainly it does not include all operations in war or even all operations for the purpose of war. For instance, the *Petersham* which was carrying iron ore to be used in the manufacture of munitions, and the *Matiana*, which was carrying cotton which might well have been intended to be used for the clothing of troops, were held by all the members of your Lordships' House who heard the appeals in those cases, not to be engaged in warlike operations. *Britain Steamship Co. v. The King*, [1921] 1 A. C. 99" (pp. 198, 199).

e. The necessity of uniformity in the international business of marine insurance is itself a sufficient reason for following the construction now firmly established in English law.

We submit that the consideration which, in the end, was persuasive with Judge Hough, is, indeed, unanswerable. After stating the issue presented by the libel, he said:

"It would be a professional pleasure to feel at liberty to treat both these questions from what I regard as the standpoint of reason; but I do not think that pleasure can be accorded. The question is not one of morals, nor of public policy; it is no more than the interpretation of certain forms of words, which are not sacred, which have varied and may be changed at any time to suit the apparent necessities of commercial profit. The important thing is to secure uniformity of view in a commercial world which now embraces and long has included more than one continent and more than one ocean. I shall, therefore, briefly state my own view and decide this case on what I conceive to be authority" (Record, fol. 264).

And he found that

"it must be held under authority, to which for business purposes the Courts of the United States should con-



form, that the collision in question was not proximately caused by any act of hostility or by the consequences thereof; because the act of joining a convoy, the act of sailing therein without lights, and the act of steering courses directed by naval authority are not, whether separately or conjointly considered, to be regarded as a warlike operation" (Record, fol. 268).

This is the large and common sense view of the situation. The universal custom of reinsurance is well known. Without reinsurance in the vastly larger English field American underwriters could not begin to accommodate the home market. The American owner would be forced to go direct to English underwriters because American underwriters could not afford to incur the risk. The business is carried on through reinsurance. If, then, in view of the immense volume of marine insurance placed during the late war, the courts here decide this fundamental question contrary to the view now firmly established in English law, the insurance world will be involved in turmoil.

In the Circuit Court of Appeals, Judge Mayer concurred with Judge Hough in recognizing "the commercial necessity" of following the English decisions.

"The questions in the case at bar," he said, "are not local, but affect an important class of world wide business in which the relations are so interwoven and connected that it would be unfortunate and confusing if a court of less authority than the Supreme Court of the United States were to arrive at a result different from that reached by the House of Lords" (Record, fol. 295).

We submit that the conflict of authority could not, in the nature of things, be less unfortunate or confusing if brought about by a decision of this Court.



## III

**The proximate cause of the loss was the negligent navigation of the colliding vessels.**

The District Court found that the collision "resulted not only immediately, but, in the legal sense, proximately, from poor navigation on the part of both colliding vessels" (Record, fol. 256). And the decree, under the mandate of the Circuit Court of Appeals, recites "that the collision set forth in the libel was caused, not by hostilities or warlike operations or consequences thereof, but by negligence, and that the loss must fall upon the marine underwriters" (Record, fols. 270, 271).

The situation at the time the vessels in the first tier of each convoy sighted the other, as found by the District Court (Record, fols. 248-254), was this: Upwards of thirty-five vessels with their accompanying escorts, divided into two approximately equal fleets, were approaching each other nearly end on. The vessels in each convoy were arranged in three tiers, about 600 yards apart. The space between the vessels in each tier was about 500 yards. The first tier of each convoy, containing the largest number of vessels, therefore, presented a front of about two nautical miles. The convoys approached each other at a combined speed of between fourteen and fifteen knots an hour (Record, fol. 251). When the loom of the other ships appeared and both fleets turned on their navigating lights, the distance between the head tiers was about three-quarters of a nautical mile (Record, fols. 250, 252). More than three minutes elapsed, therefore, between the turning on of the navigating lights and the collision. Or, as the District Judge put the limits, "there could not have been



more than two thousand yards between *Napoli* and *Lamington*, when the navigating lights were flashed on, and the time between that moment and collision could not have been more than five minutes and quite probably less" (Record, fol. 256).

Under such circumstances it is "plain beyond argument", as the District Court said, that "the duty of every navigator was to slow down to steerageway and stick as nearly to his course as possible in the hope that the vessels of each fleet would pass through the lanes between the fore and aft lines of the other fleet" (Record, fol. 253). He points out that this is what most of the steamers must have done; otherwise it is inconceivable that among so many vessels there should have been only two other collisions. In respect of the two other collisions that did occur, the Italian Investigating Commission found that they were due to faulty navigation—one, because a vessel never turned on her navigating lights, and the other because a vessel failed to reverse her engines and to give the three regulation warning whistles (Record, fol. 253).

Both the *Napoli* and the *Lamington* failed to meet this simple test. As the convoys approached each other, their courses and speeds were such that, if maintained, there would have been a collision between the *Napoli* and the *Ansoldo III*. In these circumstances both vessels ported and passed each other port to port (Record, fols. 117, 156, 161, 253-4). Obviously, the *Napoli* should have steadied her helm and straightened up on her course down the lane between the oncoming columns of ships (Record, fols. 252-3). Instead she continued to bear to starboard or, still worse, indulged in what may be called a "serpentine" (Record, fol. 161).



After zigzagging about in this erratic way—a course in itself calculated to bring on collision—the *Napoli* did perhaps the most foolhardy thing possible—stopped dead in the water and in effect invited collision with any ship that might come her way (Record, fols. 157, 161). This seems particularly inexcusable when it is remembered that the *Napoli* was a twin-screw vessel and therefore able to manœuvre more readily and assist her helm (Record, fol. 159). It was also Mr. Justice Hill's judgment that the immediate cause of the collision was the porting of the *Napoli* (Record, fol. 231).

The *Lamington*, also, was guilty of fault sufficient to cause the collision. She maintained her speed into the jaws of collision. Her speed is found to have been from six to seven knots (Record, fols. 251, 254). That this was, in the circumstances, altogether excessive, is perfectly plain.

Accordingly the District Court found as facts that both the vessels here involved navigated faultily:

"the *Napoli* in that having ported to such an extent that she ought to have known she was getting in the way of the next fore and aft convoy line, stopped and (as it seems to me) invited collision with any vessel in that line that came up out of the night, while the *Lamington* was at fault for maintaining so great a speed that she could not possibly take off her way before colliding with whatever she could clearly make out ahead. It may be noted that the speed of the *Lamington* is not only admitted, but would necessarily be found from consideration of the violent blow she struck the much larger and more powerful *Napoli*" (Record, fol. 254).

In the similar case of *Inui Gomei Kaisha v. Attolico*, Lloyd's List, Feb. 10, 1919, where the vessels were sailing without lights, the Court of Appeal applied the test with even greater strictness, for there the approaching vessels sighted each other at a distance of



one-half to three-quarters of a mile, and the collision occurred between two and three minutes later. Yet it was held that there was sufficient opportunity to form and to exercise a reasonable judgment.

Finally, we come to the contention that, whatever the faults in navigation, they may be excused as errors *in extremis*. This argument is based upon the conclusions of the Italian Investigating Commission (Record, pp. 138-147) and the proceedings before Mr. Justice Hill (Record, fols. 224-231). Each really attributes the result to the vessel of foreign nationality, and then extenuates the errors of both in view of the extremity. The District Court reviewed these findings, and came to the conclusion that "such excusatory remarks as this amount to a refusal to find fault whenever the circumstances are sufficiently alarming to furnish some excuse for losing one's head" (Record, fols. 255, 256). Having regard to the time available after navigating lights were turned on, the perfectly obvious nature of the course which the situation called for, and the safety with which most of the vessels navigated, we submit that the argument of *extremis* is not tenable. After all, seamen frequently have to act on the spur of the moment, and it is desirable that the standards of action should be maintained. The same contention was made in *Inui Gomei Kaisha v. Attolico, supra*, with as little success.

It is respectfully submitted that the decree should be affirmed.

November, 1923.

VANVECHTEN VEEDER

CHARLES C. BURLINGHAM

Counsel for Respondent



No. 579 //C

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WM. R. STANSBUR  
CLERK

**Supreme Court of the United States,**

OCTOBER TERM, 1922.

THE QUEEN INSURANCE COMPANY OF AMERICA,  
(Libellant below),

*Petitioner,*

—against—

GLOBE & RUTGERS FIRE INSURANCE COMPANY,  
(Respondent below),

*Respondent.*

---

PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS FOR  
SECOND CIRCUIT AND BRIEF IN  
SUPPORT THEREOF.

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D. ROGER ENGLAR,  
OSCAR R. HOUSTON,  
GEORGE S. BRENGLE.

*Attorneys for Petitioner.*

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*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED  
STATES:

The petition of The Queen Insurance Company of America, a New York corporation, alleges and respectfully shows to this Honorable Court as follows:

The decision which this petition seeks to review was rendered on the 5th day of June, 1922, by the Circuit Court of Appeals for the Second Circuit, in affirming a final decree rendered on the 20th day of March, 1922, by the United States District Court for the Southern District of New York.

The issue involved in the case is whether loss of the cargo of the Italian steamship "Napoli," which was sunk in the Mediterranean on July 4th, 1918, while proceeding under the convoy of British, Italian and American warships, should be borne by marine underwriters or war



risk underwriters. The issue is one of far-reaching importance, both from the commercial standpoint and from the standpoint of international law. It has never been directly passed on by this Court.

The facts are as follows: Just before midnight on July 4th, 1918, two convoys, one consisting of some twenty vessels and the other of some eighteen vessels, met almost head on in the Mediterranean, at a point half way between the coasts of Corsica and France. The convoys were approaching each other, without lights, at a combined speed of approximately 15 knots an hour, and did not become aware of each other until they were approximately 3000 feet apart. Three collisions resulted, including the collision between the Italian Steamship "Napoli," in the East bound convoy, and the British Steamship "Lamington," in the West bound convoy, out of which this case arose. The "Napoli" sank about an hour after the collision and both the vessel and her cargo became a total loss.

A large part of the cargo of the "Napoli" consisted of war materials and supplies (Record, fols. 694-719). The cargo for the most part was insured against both war and marine risks, in some cases both risks being placed with one Insurance Company and in others the marine risk being placed with one Company and the war risk being carried by another Company, or by one of the Government War Risk Bureaus. The question arose as to whether the loss of the cargo of the "Napoli" should be regarded as the result of a war risk or of a marine risk. Most of the marine and war risk underwriters paid one-half of the amount insured by them, each set of underwriters taking an assignment of the assured's rights against the other set. In the present case, which is a test suit, the petitioner insured a shipment of asbestos fibre, consigned to the British Consul, against marine risks (Record, p. 12), and the respondent insured the same shipment against the usual war risks (Record, p.



14). Each Company paid one-half of the amount insured by it, without prejudice, and took an assignment of the beneficial interest of the assured against the other (fols. 43-50). The present suit was brought by the Company insuring the marine risk to recover the unpaid balance of the war risk policy.

At the time the collision occurred, July 4, 1918, the war was at an acute stage and the German unrestricted submarine warfare was at its height. The convoy system had been adopted as the only effective way of meeting the submarine peril and all merchantmen, with the exception of a very few fast liners like the "Leviathan" and the "Aquitania," were navigating in the war zone only in convoy. As Judge Hough, who decided the case in the District Court said (fol. 736):

"It is an inference easily made from what is proven, that she (the "Napoli") would have run far greater danger by avoiding a convoy than by joining one; she sought the protection of a convoy, and so did all the other well advised vessels of no greater speed than the "Napoli" possessed, (12 knots)."

The two convoys of which the "Napoli" and "Lamington" formed parts, following the uniform practice in the Mediterranean, were made up under the direction of the naval authorities respectively at the British naval base of Gibraltar and the Italian army base of Genoa. The warships with each convoy were under the command of the Senior Officer on the warships, and each convoy had a naval officer as Commodore of Convoy, who sailed on one of the merchantmen. The entire convoy, both merchantmen and warships, was considered as a unit and was in command of the Senior Naval Officer, who might be either the Commodore of Convoy or the Senior Commanding Officer of the escorting vessels, whichever happened to be the senior (fols. 533, 583, 589).



The eastbound convoy, of which the Steamship "Napoli" formed a part, was bound from Gibraltar for Genoa. It consisted of twenty ships (of which two or three left the convoy before the collision and proceeded to Marseilles) (fol. 506). The escorting warships were H. M. S. "Jeannette II," commanded by Captain Ryan, who was the senior naval officer of the convoy, the British Trawler "Algol," the Italian Auxiliary "Toera," and the U. S. S. "Castine," commanded by Captain Asserson, U. S. N. The convoy left Gibraltar on June 30th, 1918 (fol. 505). The Commodore of Convoy was Commander Ignasio of the Italian Navy on board the S. S. "Napoli" (fol. 505). The "Napoli" was in the middle of the front line of the convoy (Bologna p. 155, Q. 22). The lines of vessels were about 600 yards apart (fols. 538, 614). The convoy had a frontage of a little less than two miles and was in this formation when the collision occurred.

The westbound convoy, of which the "Lamington" formed a part, was convoyed by the U. S. S. "Yankton" commanded by Captain Burns, U. S. N., who was the senior naval officer of the convoy, the Italian Naval Auxiliary "Citti di Ben Gazi," the Italian Destroyer "Granatierre," and the British Trawler "Achenar." The Commodore of the Convoy was on the "Ansaldo III." The convoy formed outside of Genoa at 10:30 A. M. July 4th, and consisted of eighteen merchant ships—a front line of eight ships, a second line of seven ships, and a third line of three ships (p. 85). The convoy had a frontage of a little more than two miles and the three lines were approximately 400 yards apart. The convoy was in this formation at the time of the collision, and the "Lamington" was near the center of the second line.

Both the "Napoli" and the "Lamington" convoys received secret sailing instructions before leaving the naval base. These instructions emanated from the naval authorities in command respectively at Genoa and Gibraltar (fols. 507-8). The Senior Naval Officer of each convoy



had discretionary authority to vary the sailing orders as circumstances might require, and the detailed navigation was prescribed from time to time by the naval officers in the convoy. The specific sailing instructions of the westbound convoy are set out at page 83 of the record and those of the eastbound convoy at page 29.

*No freedom of navigation whatever was permitted the merchantmen in either convoy.* Their navigation was prescribed in three ways:

(1) By the sailing orders issued at the base from which they started (fols. 507-8, 513, 655; Exhibits 1, p. 28, and 5, p. 81);

(2) By the Commodore of Convoy and the Senior Naval Officer (fols. 533, 544, 583); and

(3) By certain general British convoy regulations as to lights, etc. (fols. 515, 524).

Thus the naval authorities prescribed, in one or another of these ways:

(1) The course of each convoy (fols. 513, 514, 539, 581, 583, 589 and pp. 29, 83).

(2) The speed of the convoys (fols. 590, 545-6, 548 and p. 83).

(3) The arrangement of the vessels in tiers and columns (fols. 524, 541 and p. 82).

(4) Their distance apart (fol. 613 and p. 83).

(5) When to zigzag and the exact zigzag to be followed (fols. 542-4).



(6) That no lights must be shown except in great emergency (fol. 382, pp. 160-1, Q. 145-7, fol. 522).

(7) As Captain Asserson said, the Senior Naval Officer was in "command of the entire convoy, merchant as well as naval vessels" (fol. 533) and even matters of immediate navigation such as porting and starboarding were prescribed by the Commodore of Convoy (fol. 541).

The eastbound, or "Napoli" convoy, followed the prescribed route, but slightly east of the exact course laid down in the sailing orders, and was about twenty-four hours ahead of schedule at the time of the collision, on orders from the Senior Naval Officer (fol. 548).

The westbound, or "Lamington" convoy followed her prescribed course until about five hours before the collision. At that time one of the ships in this convoy was sunk by a submarine and as a result of this submarine attack the course was changed twice under orders from the Commodore of the Convoy (Record, p. 85; Record, fols. 584-585). It is accordingly clear that the courses laid down in the sailing instructions, together with the detailed orders of navigation given during the voyage of the two convoys by the Senior Naval Officer and Commodore of Convoy, brought the two convoys into collision.

The collision occurred at 11:38 P. M. The convoys met almost head on and did not become aware of each other's presence until the front lines of each convoy were approximately 1000 yards apart. As they were approaching each other at a combined speed of 15 knots (fol. 752; p. 155, Q. 26), there was only from two to three minutes of time for manoeuvring. The lights were immediately turned on and the vessels of each convoy endeavored to navigate between the vessels of the other. It was a case



of each ship for itself, and in the words of Judge Mayer of the Circuit Court of Appeals in his concurring opinion

"The situation which developed was so unexpected, confusing and exciting as to invite for its description the pen of a Conrad" (Record, fol. 879).

The "Napoli," which was in the front line of the eastbound convoy, successfully manoeuvred between two of the vessels in the front line of the westbound convoy, but collided with the "Lamington" in the second line of that convoy and as a result of the collision sank with all of her cargo.

The collision between the "Napoli" and the "Lamington" has been the basis of a judicial decision in England. A libel was filed in England on behalf of the cargo of the "Napoli" against the "Lamington," and was tried in July, 1921, resulting in the dismissal of the libel. Mr. Justice Hill, whose opinion is printed as Exhibit 20 (fol. 670, et seq.) said (fol. 690):

"It seems to me to be quite clear that this is one of those cases in which two convoys, unlighted, suddenly became aware of one another's presence at a very close distance, became greatly confused in their formation, and in their efforts they made to avoid one another, without any fault on the part of anybody, the collision took place."

The Elder Brethren of Trinity House concurred in this decision and it is in accord with the findings of the Italian Court of Inquiry appointed by the Ministry of Marine (fols. 434, 435).

The present case was tried in the District Court for the Southern District of New York before Judge Hough, who held that neither the "Napoli" nor the "Lamington" were entirely free of fault, but stated that the *causa causans* of all of the collisions which occurred when the



two convoys met, was the "total disregard of each convoy for the other" (fol. 768), and that an

"important navigator's fault lay with the Senior Naval Officers of both convoys for failing to take any steps to prevent just such a meeting as did occur" (fol. 771).

Judge Hough decided the case, however, on the broad general ground that sailing in convoy at night without lights was not a warlike operation or an act done in the prosecution of hostilities, even though the convoyed vessel was carrying war supplies and munitions; and that consequently the loss of the "Napoli" and her cargo was not the result of a war risk. Judge Hough decided the case as he did against his own judgment, feeling bound by two decisions in the British House of Lords.

The Circuit Court of Appeals for the Second Circuit affirmed the decision of the Lower Court. Judge Manton, who wrote the opinion of the Court, held that neither—(1) sailing in convoy nor (2) sailing at night without lights under Admiralty orders, nor (3) the transportation of munitions of war, nor all three combined, amounted to a warlike operation or an act done in the prosecution of hostilities, and that accordingly, the collision, which was admittedly the result of sailing in convoy without lights, was not caused by a war risk. Judge Manton also relied upon the two House of Lords decisions, which were the basis of the District Court's decision. Judge Rogers concurred in the result. Judge Mayer, in a concurring opinion, agreed with the District Court in holding, as a matter of principle and sound reasoning, that sailing in convoy was a warlike operation and an act done in the prosecution of hostilities, but stated that in his opinion, "no Court of less authority than that of the Supreme Court of the United States should arrive at a result different from that reached by the House of Lords," on an issue as important as that involved in this case (fol. 885).



Your petitioner respectfully submits that the present case is one in which it is proper for this Court to issue a writ of certiorari, for the following reasons, among others:

First: The question of what constitutes a war risk as opposed to a marine risk, in marine insurance, is one of great commercial importance. It has been considered in one form or another in at least six cases by the British House of Lords. It has not been discussed or passed upon by this Court. No more important commercial question has been raised by the World War, than that involved in the present case.

Second: Two of the three judges who have written opinions in the present case have specifically stated that in their opinion the decision at which they arrived was opposed to sound principle and reason. They decided the case as they did solely because of two decisions of the British House of Lords, by which they felt bound.

Judge Hough said (fols. 790-4, 797, 804):

"It would be a professional pleasure to feel at liberty to treat both these questions from what I regard as the standpoint of reason; but I do not think that pleasure can be accorded. \* \* \*. The important thing is to secure uniformity of view in a commercial world which now embraces and long has included more than one continent and more than one ocean. I shall therefore, briefly state my own view and decide this case on what I conceive to be authority.

My own view in this matter is that of Bailhache, J., expressed in *The Petersham (Britain, etc. Co. v. The King)* (1919) 1 K. B., 575 (580); and *The Matiana (British, etc. Co. v. Green)* (1919) 1 K. B., 632 (636), viz:

'However peaceful the immediate business upon which a ship is engaged—if she is sailing



as one of a convoy she is engaged, in my opinion, in a warlike operation. The assembling, presence, protection and movements of the King's ships protecting the convoy are a warlike operation, and both convoyed and convoying ships are taking part in it, and that character attaches to the whole flotilla and covers the whole operation.'

\* \* \* This I think to be the large and commonsense view of the situation. \* \* \* For these reasons I agree in principle with Bailhache, J., and particularly sympathize with the defiance flung by him at the reasoning of *The Ionides* case, *supra*, indicated in the last of the above quotations.

But the spirit of *The Ionides* decision triumphed when the *Matiana* and *Petersham* cases had gone through the Court of Appeals (1919, 1 K. B., 670) and received final treatment in the House of Lords (1921, 1 A. C., 99).

\* \* \* It must be held under authority, to which for business purposes the Courts of the United States should conform, that the collision in question was not proximately caused by any act of hostility or by the consequences thereof."

Judge Mayer, in his concurring opinion in the Circuit Court of Appeals, said:

"The theory of this case should be that "a warlike operation" is not confined to actual offense, attack or armed engagement but may, in any event, comprehend a movement of vessels initiated in accordance with sovereign compulsion for the purpose of delivering munitions and supplies either to one's own country or to allies or associates.

\* \* \* Yet, whatever our own views may be, I think the District Court, per Hough, J., was right in recognizing the commercial necessity of following the *Petersham* and *Matiana* cases, decided by the House of Lords by the narrow margin of three to two.

The questions in the case at bar are not local but affect an important class of world wide busi-



ness in which the relations are so interwoven and connected that it would be unfortunate and confusing if a court of less authority than the Supreme Court of the United States were to arrive at a result different from that reached by the House of Lords" (Record, fols. 883, 884, 885).

Both Judge Hough and Judge Mayer decided the case against their own best judgment, feeling that

"it would be unfortunate and confusing if a court of less authority than the Supreme Court of the United States were to arrive at a result different from that reached by the House of Lords" (Record, fol. 885).

even though in their opinion the House of Lords was wrong.

Third: This Court has already stated, as will be shown in the brief in support of this petition, that

"A convoy is an association for a hostile object,"

and, in effect, that the sailing of a merchantman with a convoy in time of war is a warlike operation. This Court has, accordingly, already adopted a principle diametrically opposed to the rule which was the basis of the two decisions of the House of Lords, on the authority of which the present case was decided, both by the District Court and the Circuit Court of Appeals.

Fourth: The present case, viewed in its larger aspects, involves not merely the law of marine insurance, but principles of International law, upon which text writers have differed and which have been the basis of controversies between this nation and foreign governments; viz., the question of the status of merchant vessels in convoy. This question is essentially justiciable rather than diplomatic and it is respectfully submitted that it should be decided by this Court.



WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Circuit Court of Appeals to certify and send to this Court on a day certain to be designated, a full and complete transcript of the record and of all the proceedings of the said Circuit Court of Appeals in this connection, which was entitled in that Court: "The Queen Insurance Company of America, Libellant-Appellant v. The Globe & Rutgers Fire Insurance Company, Respondent-Appellee," to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief in the premises as to this Court may seem just, and that the said decree of the Circuit Court of Appeals may be reversed by this Honorable Court.

Dated, September 1st, 1922.

THE QUEEN INSURANCE COMPANY OF AMERICA,

JOHN E. HOFFMAN,  
*Petitioner.*

D. ROGER ENGLAR,  
OSCAR R. HOUSTON,  
GEORGE S. BRENGLE,  
*Of Counsel.*



State of New York,  
County of New York—ss.:

JOHN E. HOFFMAN, being duly sworn, deposes and says:

That he is the manager of Marine Department of THE QUEEN INSURANCE COMPANY OF AMERICA, the petitioner herein; that he has read the foregoing petition, and that the same is true as he verily believes.

JOHN E. HOFFMAN.

Sworn to before me this  
1st day of September, 1922.

JOHN J. CLARKE,  
Notary Public,  
New York County.  
New York County Clerk's No. 230.  
Commission expires March, 1924.

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I hereby certify that I have read the foregoing petition and, in my opinion, it is well founded and deserves the favorable consideration of this Court.

D. ROGER ENGLAR,  
*Of Counsel.*







# Supreme Court of the United States,

OCTOBER TERM, 1922.

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THE QUEEN INSURANCE COMPANY OF AMERICA,  
(Libellant below),

*Petitioner,*

—against—

GLOBE & RUTGERS FIRE INSURANCE COMPANY,  
(Respondent below),

*Respondent.*

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## **BRIEF FOR PETITIONER.**

The facts are summarized in the Petition. They are also set out in the opinions of the District Court and the Circuit Court of Appeals (fols. 727, *et seq.*; fols. 832, *et seq.*).

The facts which should be particularly noted are: that the collision took place on a dark night, between vessels forming parts of two huge convoys, which were approaching each other without lights at the combined rate of fifteen knots an hour, and that the presence of neither convoy was known to the other until they were approximately 1000 yards apart; that the two convoys were under the protection of a large number of war-ships and were under the complete control of naval officers, who not merely directed the routes that each should follow, but directed and controlled the manœuvres of navigation, even to the porting and starboarding of the vessels; that the "Napoli" was carrying materials for use in the war; that both the convoy system and the practice of sailing without lights were adopted as war measures, necessary to the defeat of Germany and her allies, in view of the unrestricted submarine war-



fare; and that the collision occurred as the direct and proximate result of sailing in convoy without lights and in the course of voyages whose routes were prescribed by the naval authorities. The regulations under which the convoys were proceeding had the legal status of law and the sanction of force behind them. The convoys were proceeding under the British regulations, and all vessels in convoy were subject to the British Naval Discipline Act of 1886. This is well pointed out by Lord Shaw in the case of *The Matiana* (1921), 1 A. C. at pp. 123-4.

The cause of the collision between the "Napoli" and the "Lamington" has been discussed and passed upon by four Judges in three Courts, by the Elder Brethren of Trinity House, and by a Court of Inquiry consisting of four Naval Officers appointed by the Italian Ministry of Marine.

Judge Hough, before whom the present case was tried in the District Court, held that both the "Napoli" and the "Lamington" were guilty of faulty navigation but made it clear that in his opinion such faulty navigation was not the proximate cause of the loss. In the course of his opinion, Judge Hough said:

"In my opinion the *causa causans* of all of the collisions of that night was the total disregard by each convoy of the other"; (Record, fol. 768).

"It follows that in my opinion a certain and important navigator's fault lay with the senior naval officers of both convoys in failing to take any steps to prevent just such a meeting as did occur. But this latter fault (assuming it now to exist) raises a question which is one of law, viz.: whether such careless navigation on the part of the *convoyers* produced a risk for which protection must be sought under the policy of the libellant rather than that of the respondent" (fols. 771, 772).



Judge Hough held it did not, because, as will be shown hereafter, under the British decisions on which he relied, a distinction is drawn between the status of the convoyed merchantman and the convoying warships. This distinction has been rejected in this country by this Court.

Judge Manton of the Circuit Court of Appeals adopted the views of Judge Hough in this regard (Record, fol. 871).

Judge Mayer, however, in a concurring opinion in the Circuit Court of Appeals, rejected any theory of faulty navigation and held that any errors of navigation

"must be regarded as having been committed *in extremis* in a situation so unexpected, confusing and exciting as to invite for its description the pen of a Conrad" (Record, fol. 879).

Mr. Justice Hill, sitting in the Admiralty Division of the King's Bench in the British case brought by the owners of the "Napoli" cargo against the "Lamington" held that the collision occurred

"without any fault on the part of anybody" (Record, fol. 690).

The Elder Brethren of Trinity House, two of whom, Captain A. W. Clarke, K. B. E., and Captain Owen Jones, C. B. E., sat with Mr. Justice Hill in the decision of the case, concurred in finding that both vessels were without fault.

The Italian Court of Inquiry, appointed by the Italian Ministry of Marine, and consisting of four Naval Officers, also held that the collision between the "Napoli" and the "Lamington" did not result from the fault of either vessel, and said:

"Owing to the short distance between the two convoys, the courses whereof were bringing them



to meet \* \* \* it was not possible for the two convoys to manoeuvre and bear at the same time to the convenient side in order to avoid a collision. Nor was it possible to stop the two convoys, because in the instructions given no provision was made for a luminous emergency signal to order such a manoeuvre.

"No general manoeuvre, on the other hand, being possible, each Commander manoeuvred separately endeavoring to avoid the collision" (fols. 418-9).

"The Commission, however, feel it their duty to point out the circumstances under which the manoeuvres in question had to be executed and are of opinion that the anxiety of the Commanders must have been very great because, besides having to avoid the steamers ahead, they had also to see to avoid being struck by those astern. Moreover the sudden appearing of so many lights, the noise of so many sound signals directing the manoeuvres must necessarily have generated a confusion which was entirely to the disadvantage of the necessary calm which every Commander had to preserve in order to avoid collisions which appeared impending from all sides" (fols. 434-5).

Although the question whether any negligence in the navigation of the individual ships contributed to the collision, was discussed at some length by the lower Courts, neither of these Courts based its decision on a finding that there was such negligence. The lower Courts decided the case solely on the ground that the collision (quite apart from any question whether there was faulty navigation on the part of either vessel involved) was not the result of a war risk. Accordingly the question whether the navigation of the "Napoli" or "Lamington" is subject to criticism is only of collateral importance in considering the real issue involved. It is clear that the collision was due primarily and proximately to the system under which the two convoys were operated—a system which was adopted as a war measure



and as the most essential means of combating the German submarine campaign and thereby bring about the defeat of Germany.

*The Insurance Policies issued by the Petitioner and the Respondent.*

The marine policy issued by the petitioner on a part of the cargo of the "Napoli" contained the following F. C. & S. clause:

"Warranted by the assured free from loss or expense arising from capture, seizure, restraint, detention or destruction and the consequences thereof or of any attempt thereat, and also from all consequences of riots, insurrections, hostilities or warlike operations, whether before or after declaration of war, and whether lawful or unlawful, and whether by the act of any belligerent nations, or by governments of seceding or revolting states, or by unauthorized or lawless persons therein, or otherwise" (Exhibit AA, Record, p. 13).

The respondent's war risk certificate on the same cargo contained the following clause:

"It is agreed that *this insurance covers only the risk of capture, seizure, or destruction, or damage, by men-of-war, by letters of marque, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations.*" (The italics are ours.) (Exhibit B, Record, p. 14.)

As stated in the petition, the petitioner and the respondent each paid one-half of the loss resulting from the destruction of the cargo covered by the two policies, each acquiring by subrogation the rights of the assured against the other. The issue in the present case is whether or not the petitioner, standing in the place of the assured, by assignment as well as by subrogation, is



entitled to recover from the respondent Insurance Company which issued the war risk policy. Both the District Court and the Circuit Court of Appeals held that the loss fell on the marine underwriters rather than the war risk underwriters.

## POINT I.

**The collision which caused the loss of the "Napoli" and her cargo was the proximate and direct result of the "prosecution of hostilities between belligerent nations," and was solely due to the method of navigation prescribed by the naval authorities as an essential of the conduct of the war.**

The respondent's policy of war risk insurance provided that

"This insurance covers \* \* \* destruction, or damage, by \* \* \* acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations" (Exhibit B, Record, p. 14).

The loss of the cargo of the "Napoli" was covered by this policy.

**To sail in convoy is a warlike operation and is an act done in the prosecution of hostilities.**

It is upon this point that the British Courts and Judges have differed. The only British case which directly deals with the matter is that of the "*Matiana*" (1921), 1 A. C. 99 (House of Lords), affirming the decision of the Court of Appeal (1919), 2 K. B., 670, reversing the Trial Court (1919), 1 K. B. 632. It appeared in that case that the "*Matiana*" was insured by the usual marine policy, containing a clause excluding loss caused by war risks similar to that contained



in the policy of the Petitioner herein, and also by a separate war risk policy covering "all consequences of hostilities or warlike operations." While zigzagging under convoy on a dark night, the "*Matiana*" stranded on a reef. No negligence was found. The vicinity of the accident was usually infested with submarines, but none were known to be present at that particular time. The Trial Court held that the loss should fall upon war risk underwriters. The Court of Appeal held that the loss resulted from a marine risk. In the House of Lords the Court was divided, three judges, Lord Atkinson, Lord Sumner and Lord Wrenbury, holding that it was a marine risk, and Viscount Cave and Lord Shaw of Dunfermline dissenting.

Mr. Justice Bailhache, who decided the case in the Trial Court, said (1919, 1 K. B., 632, 636) :

"To sail with convoy is, in my opinion, a warlike operation. The assembling of the ships to be convoyed, and of the men-of-war to convoy them, the voyage of the whole flotilla, the route chosen and the precautionary measures taken on the voyage must be taken together as all part of a warlike operation. In this case the vessels pursued a zigzag course, and were sailing at the time of the stranding through a submarine-infested area, and some 30 miles to the northward of the ordinary peace time course. The stranding happened in the course of this warlike operation, and, subject to another point made by the war risk underwriters, was directly due to it."

In the House of Lords, Lord Shaw of Dunfermline agreed with the opinion thus expressed, and said (1921, A. C., 99-123) :

"I think that the putting of a vessel under convoy, with all that that involves, is an actual and accomplished change of circumstances and an operation which is conducted in the course of hostili-



ties or war. The loss of the vessel, in my humble opinion, did arise out of 'the consequence of hostilities or warlike operations,' and the case is therefore free from the scope of a maritime peril and falls within the war risk insured against."

Four of the judges in the Court of Appeal and the House of Lords, who concurred in holding that the loss of the "Matiana" was the result of a marine and not a war risk, held that the sailing in convoy was a warlike or hostile operation as far as the conveying warships was concerned, but that the merchant ships which were being convoyed were not identified with the warships and were not themselves engaged in a warlike undertaking, or in the prosecution of hostilities. Lord Justice Atkin, in the Court of Appeal (1919, 2 K. B. 670, 698) said:

"It appears to me fallacious to identify the merchant vessels sailing with convoy with the warships which escort them. The warships are engaged in the warlike operation of protecting non-combatant vessels from the enemy. The merchant vessels are engaged in the peace-like operation of conveying merchandise by sea. The sheep are not the shepherd; and are not engaged in the operation of shepherding."

This view was adopted by the majority judges in the House of Lords, and is the basis of the decision. It is the real *ratio decidendi* of the case.

Lord Shaw of Dunfermline, on the other hand, not merely concurred with Mr. Justice Bailhache in stating that the sailing under convey is itself a warlike operation, but held that no distinction could be drawn between the warships which acted as convoy, and merchant ships which were convoyed.

Lord Shaw said (1921, A. C., 99-124-125):

"I do not doubt that so far as the ships acting as convoy were concerned they were thus con-



ducting a warlike operation. I think the decision in the case of *Ard Coasters Ltd. v. The King*, to the effect that a warship patrolling in the course of her duty and thereby causing a collision with a merchant vessel, was a right decision. \* \* \* Suppose, in the present case one of the ships acting as convoy had run down one of the ships convoyed, I can hardly doubt that that event would have been similarly found. The case accordingly is narrowed to the distinction between ships which are acting as convoy and ships which are themselves under convoy. I myself see great force in the view which Bailhache, J. so clearly expresses to the effect that all the vessels—those acting as convoy and those under convoy—must be treated as a unity. He concludes accordingly that they were all engaged in warlike operations. I respectfully agree with that learned judge. \* \* \*

I am humbly of opinion that, so far as ships under convoy are concerned, all these ships are, along with the ships acting as convoy, under a unified command, and that command issuing from the commander of the convoy is, as part of the direction of the convoy, a military operation. The consequence of it upon those merchant vessels to whom the command was issued was to place them compulsorily in a situation of peril in which unquestionably they would not have been placed but for the course thus forced upon them."

The Supreme Court of the United States has already considered the status of merchant ships under belligerent convoy and has reached a conclusion in accord with the views expressed by Mr. Justice Bailhache and Lord Shaw, and against those of the majority judges in the House of Lords.

In the case of *The Atalanta*, 3 Wheaton 409, this Court held that a neutral cargo, found on board an armed enemy's vessel, is not liable to condemnation as prize of war. Mr. Justice Johnson, however, in a very



carefully considered opinion, drew a distinction between the case of neutral cargo shipped on an armed enemy's vessel, and the case of a merchant vessel which accepts the protection of a belligerent convoy. Mr. Justice Johnson said (p. 423) :

*"A convoy is an association for a hostile object; in undertaking it, a nation spreads over the merchant vessel an immunity from search, which belongs only to a national ship; and by joining a convoy, every individual ship puts off her pacific character, and undertakes for the discharge of duties which belong only to the military marine, and adds to the numerical, if not to the real, strength of the convoy. \* \* \* To elucidate this idea, let us suppose the case of an individual, who voluntarily fills up the ranks of an enemy, or of one who only enters upon the discharge of those duties in war, which would otherwise take men from the ranks; and the reason will be obvious, why he should be treated as a prisoner of war, and involved in the fate of a conquered enemy."* (The italics are ours.)

This language follows the dictum in the dissenting opinion of Mr. Justice Story in *The Nereide*, 9 Cranch 388-445.

Mr. Justice Story says:

"On the whole, on this point, my judgment is, that the act of sailing under belligerent or neutral convoy is, of itself, a violation of neutrality, and the ship and cargo, if caught *in delicto*, are justly confiscable; and further, that if resistance be necessary, as in my opinion it is not, to perfect the offence, still, that the resistance of the convoy is, to all purposes, the resistance of the associated fleet."

The language above quoted from both *The Atalanta* and *The Nereide*, was dictum, but it has been adopted as the law of this country.



In *The Ship Galen v. The United States* (37 Court of Claims, 89), it appeared that an American merchant ship had sailed from England under British convoy. Nine days after leaving the convoy she was captured by a French Privateer. In holding that the vessel was not subject to condemnation under the Law of Nations, in view of the fact that she had left the convoy, the Court said:

"The true reason why a vessel captured while sailing under convoy is liable to condemnation is that *she has for the time being allied herself with the enemy; she has become part of the hostile whole.* \* \* \* She is, for the time, a vessel which must be known by the company she keeps.

Figuratively speaking again, when she joins the convoy, and as long as she continues with it, she has hauled down her neutral flag and is sailing under the flag of the convoy. It is too late when she falls into the hands of her captor to run up her own flag. The right of capture (not of search) rests upon the fact that she is then a *part of a hostile force*. Mr. Justice Johnson, in *The 'Atalanta'* (3 Wheat., R., 409, 424), clearly illustrates the true ground of a vessel's liability when he likened her to a neutral citizen who enlists in the army of a belligerent and is taken prisoner of war, and who is thereby 'involved in the fate of a conquered enemy'." (The italics are ours.)

To the same effect see *The Schooner Nancy* (27 Court of Claims, 99) and *The Black Sea Nymph* (36 Court of Claims, 369).

Mr. Woolsey, in his work on *International Law*, 4th Edition, Section 193, page 329, in discussing merchant ships which sail in convoy, says:

"Upon the whole, the intention to screen the vessels behind the enemy's guns, is so obvious, that the act must be pronounced to be a decided departure from the line of neutrality, and one which may justly entail confiscation on the offending party."



1 *Kents, Commentaries*, 4th Edition, Section 155, page 154, Part I, Lecture 7:

"The very act of sailing under the protection of a belligerent or neutral convoy, for the purpose of resisting search, is a violation of neutrality."

In defining "convoy," it is stated in 13 *Corpus Juris*, 931, that

"it (a convoy) is an association for a hostile object."

Moore, in Volume 7 of his *International Law Digest*, page 494, quotes the dictum of Mr. Justice Story in *The "Nereide"* (*supra*), as stating the law of this country at the present time, in regard to the status of merchant ships in convoy.

The British Courts have never doubted that collision during war time between a merchant vessel and a war ship is the result of warlike operations and that the loss falls on war risk underwriters. In "*The Richard de Larringa*"; *Attorney General v. Ard Coasters* (1921), 2 A. C. 141, affirming decisions in the Court of Appeal, 36 T. L. R. 555, which affirmed decisions in the Court of King's Bench (1920), 3 K. B. 65, it appeared that a merchant vessel collided at night with a British destroyer which was searching for submarines. Neither had lights, but neither was held to be at fault. The House of Lords held that the collision was due to warlike operations. This decision was specifically approved by the majority judges in the House of Lords in the *Matiana*, who distinguished the case merely on the ground that "the sheep are not the sheppard," that "it is fallacious to identify the merchant vessels sailing with convoy with the warships that escort them."

In "*The St. Oswald*"; *British & Foreign Steamship Company v. Rex* [1918] 2 K. B. 879, (a decision of the



Court of Appeal, affirming the decision of Rowlatt, J. in [1917] 2 K. B. 769), it appeared that the "St. Oswald" was under Admiralty charter T-99, providing that the master was to obey all orders from the Admiralty or naval officers and that the Admiralty took the risk of

"all consequences of hostilities or warlike operations."

The *St. Oswald*, in accordance with Admiralty orders, was steaming on a dark night, with her lights obscured when she sighted the French warship "Suffren," which was also steaming without lights but almost immediately disclosed them. The "St. Oswald" ported her helm and the battleship starboarded, resulting in a collision. Neither vessel was held at fault. The British Court of Appeal held that the Admiralty was liable, since the loss was a consequence of warlike operations and did not result from a marine risk.

In view of the approval of the *Richard de Larrinaga* case expressed by the majority judges of the House of Lords, there can be no doubt that those judges would have held war risk underwriters liable in the *Matiana* case, if that vessel had collided with one of the convoying war ships. It was expressly so stated by Lord Shaw of Dunfermline (1921, A. C., at p. 124). Accordingly, as stated above, the real basis of the "*Matiana*" decision is that the merchant ships in a convoy are not identified in any way with the convoying warships; the convoying warships being engaged in a warlike operation in the prosecution of hostilities, but the merchant ships being engaged in the peaceful operations for which they were designed.

Compare this holding, and the statement of the majority judges that "it is fallacious to identify the merchant vessels sailing with convoy with the warships that escort them," with the statement of this Court in "*The Atalanta*" that "*a convoy is an association for a hostile*



object" and that "by joining a convoy, every individual ship puts off her pacific character, and undertakes the discharge of duties which belong only to the military marine." Can there be any doubt that this Court, if it adhered to its previous rulings, would have decided the *Matiana* case as did the minority judges and would have held war risk underwriters liable? Can there be any doubt that this Court has already passed upon the matter from "the standpoint of reason" and "the large and commonsense view of the situation," which Judge Hough in the District Court lamented he was not free to adopt because of the *Matiana* decision?

*The Petersham; British Steamship Company v. The King* (1921), A. C. 99, relied on by both the District Court and the Circuit Court of Appeals in arriving at the present decision, is not in point, since neither of the colliding vessels involved in that case was in convoy at the time of the collision.

Two further points should be noted in the present case. The first is that both the "Napoli" and the "Lamington," as well as the convoys of which they formed parts, were proceeding on a dark night without lights. It is now apparently the law in England, that sailing without lights is not of itself a warlike operation and is not an act done in prosecution of hostilities and that consequently a resulting loss does not fall on war risk underwriters.

*The Petersham; British Steamship Company*  
v. *The King*, 1921, A. C. 99;  
*Ionides v. Universal Marine Insurance Co.*,  
14 C. B. (N. S.) 259.—143 English Reprints  
445.

When the *Petersham* case was before the trial court, however (1919, 1 K. B. 575, 581), Mr. Justice Bailhache said by way of dictum that in his opinion the removal of coast lights was a warlike operation, and that accord-



ingly a resulting loss would be covered by a war risk policy. Mr. Justice Roche, in the case of *Inui Gomci Kaisha v. Attolico*, reported in *Lloyds List*, July 20, 1918, at page 7, held, by way of dictum, that sailing without lights at night in defiance of the rules of navigation was a warlike operation; and in the *St. Oswald* case, (*supra*), the act of sailing without lights was one of the points which the Court emphasized in arriving at its decision that the loss of the vessel was the result of a war risk. Judge Hough, in deciding the present case in the District Court, stated that he agreed with the reasoning of Mr. Justice Bailhache in the *Petersham* case, although he did not feel free to follow it (*Record*, fol. 796-7). The point is not essential to the present case, since sailing in convoy is itself a warlike operation. The fact that both the "Napoli" and the "Lamington" were without lights, however, is a fact to which, we submit, weight should be given.

The other point which we ask the Court to note, is that the "Napoli" was carrying war supplies and munitions to an Army and Navy base for use in the war. It is undisputed that a substantial portion of her cargo consisted of munitions and supplies consigned to the Italian Army and other governmental authorities for use in war (fols. 694, *et seq.*). On this point the present case is undistinguishable from two of the recent decisions in England.

*In P. & O. Branch Service v. Commonwealth Shipping Representative*, 38 T. L. R. 93 (affirmed by the Court of Appeal, 38 T. L. R. 433-434; 10 *Lloyds List* 514); the decision of Mr. Justice Bailhache is reported as follows:

"But the arbitrator found that in going from Mudros to Alexandria the 'Bonvilston' was going from one military base to another. She was carrying ambulance wagons, which were intended for the use of soldiers, and that appeared to be



as much a warlike operation as the conveyance of soldiers would be. He held, therefore, that the 'Bonvilston' at least was engaged in a warlike operation, and the loss of the "Geelong" was therefore the result of a war risk, and not a marine risk."

The above decision was followed by Mr. Justice Rowlatt, in *Atlantic Transport Co. v. Director of Transports* (38 T. L. R. 160).

The point of these decisions is not so much that carrying contraband enhanced the risk of being sunk by a submarine (as stated by the District Court, fol. 774) as that carrying munitions and supplies to an army base is a warlike operation in itself, and therefore any resulting collision is the result of a warlike operation as defined in the *Matiana* and *Richard de Larrinaga* cases. This point also should be considered primarily in connection with the fact that the "Napoli" was sailing in convoy and as adding weight to the conclusion that sailing in convoy is a warlike operation.

The only other question in the case is one of causation. It cannot be doubted that the cause of the collision in the present case was that the vessels were sailing in convoy under naval control, without lights on a dark night and were parts of such large and unwieldy fleets that a collision could not be avoided when the presence of the two fleets became known to each other. None of the judges either in the District Court nor in the Circuit Court of Appeals has doubted this fact, the decision in both Courts below being based solely on the ground that sailing in convoy is not a warlike operation, or an act done in the prosecution of hostilities. That the sailing in convoy was the proximate and efficient cause of the loss has not and cannot be doubted.



### **CONCLUSION.**

There is presented in this case the question of the status of merchant vessels in convoy, and the question of whether or not sailing in convoy without lights and in the course of transporting munitions of war, is a warlike operation or an operation done in the prosecution of hostilities. The question is one of great importance, both from the standpoint of commercial and international law. Both the District Court and the Circuit Court of Appeals have decided the case against their own views, feeling bound by a three to two decision of the House of Lords. Neither Court has discussed either the case of "The Atalanta" or the case of "The Nereide" in which this Court has expressed views diametrically opposed to those of the majority of the House of Lords in the cases relied on below.

*We therefore submit that this is a proper case for the issue of a Writ of Certiorari.*

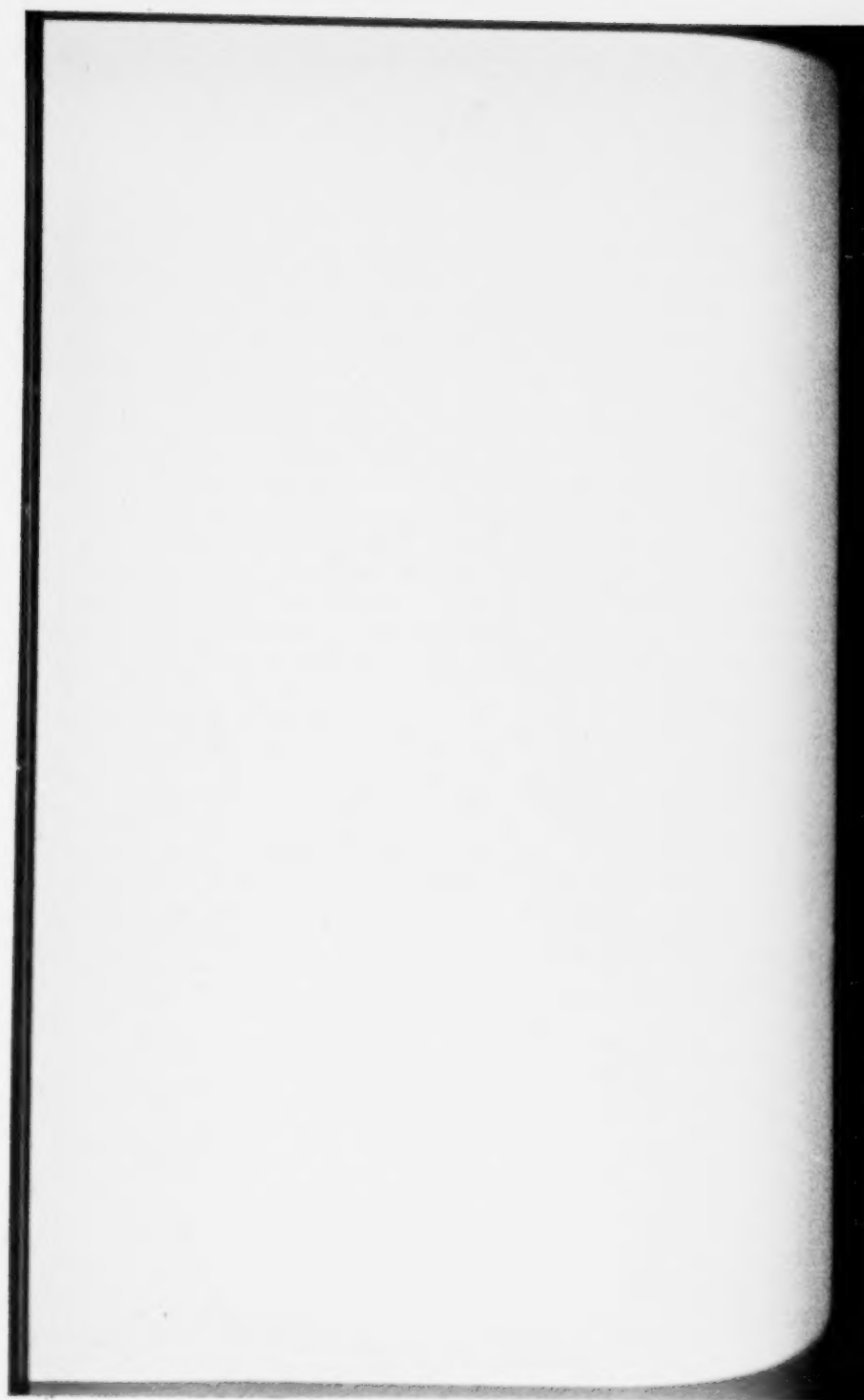
Respectfully submitted,

D. ROGER ENGLAR,  
OSCAR R. HOUSTON,  
GEORGE S. BRENGLE.

*Attorneys for Petitioner.*

Dated, New York, September 1st, 1922.







SUPREME COURT OF THE UNITED STATES

THE QUEEN INSURANCE COMPANY OF  
AMERICA (Libellant below),

Petitioner,

AGAINST

GLOBE & RUTGERS FIRE INSURANCE COM-  
PANY (Respondent below),

Respondent.

No. 579  
October Term,  
1922

BRIEF IN OPPOSITION TO THE PETITION FOR  
A WRIT OF CERTIORARI

It is a sufficient answer to this petition that both the District Court and the Circuit Court of Appeals found as a fact that the proximate cause of the collision was negligent navigation. The District Court, by Hough, *C. J.*, said:

"It is my opinion, and I find from the material furnished, that both the vessels here involved navigated faultily; the Napoli in that having ported to such an extent that she ought to have known she was getting in the way of the next fore and aft convoy line, stopped and (as it seems to me) invited collision with any vessel in that line that came up out of the night; while the Lamington was at fault for maintaining so great a speed that she could not possibly take off her way before colliding with whatever she could clearly make out ahead" (Record. p. 254).



Summarizing his conclusions at the close of his opinion, he reiterated this view :

"It is my personal opinion on this record that, acknowledging the danger in which these two convoys found themselves at midnight of July 4, 1918, the navigators of both Napoli and Lamington failed in their ship-management to exercise the ordinary care and skill of their calling. Therefore such negligence was the proximate cause of collision and the loss must fall upon the marine underwriters" (Record, p. 268).

In the Circuit Court of Appeals, Judge Manton, who delivered the opinion of the Court, said :

"The District Court held that both the navigators of the Napoli and the Lamington 'failed in their ship management to exercise the ordinary care and skill of their calling' and concluded that the proximate cause of the collision must therefore fall upon the marine underwriters. An examination of such testimony as has been offered leads us to agree with this conclusion. Mr. Justice Hill, who considered the case in the British courts in a suit by the owners of the cargo on the Napoli against the owner of the Lamington (the opinion is part of the record), found no fault on the part of the Lamington but said that 'the immediate cause of the collision was the porting of the Napoli and nothing else.' Both judges have concluded that it was the faulty navigation which brought about the collision and not a warlike operation" (Record, pp. 290-291).

Accordingly, on this finding of fact by both courts below the loss necessarily falls on the marine underwriters and the libel was properly dismissed.

Any expression of opinion on other points argued becomes *obiter*. But it must be observed that on the other grounds discussed all four judges who participated in the decision of the case in the courts below agreed in the conclusion that the libel must be dismissed—two on the



ground that sailing in convoy without lights was not a warlike operation, and two on the ground that the necessity of uniformity in the commercial world was a sufficient reason for following the construction now firmly established in English law.

The new matter on which the petitioner relies is wholly ineffective. The passages quoted from the opinion by Mr. Justice Johnson in *The Atalanta*, 3 Wh. 409, and by Mr. Justice Story in *The Nereide*, 9 Cr. 388, relate to an entirely different issue, namely, the distinction between neutral and belligerent status. But the distinction between convoyed merchantmen and their escort has been recognized from the earliest days of maritime warfare; it is recognized in the definition of convoy in 13 Corpus Juris 931, from which the petitioner quotes the last clause. The roles of the two classes of ships are entirely different. That of the ships of war is protective and, if need be, combative; that of the merchantmen is not at all combative, and, as far as the circumstances permit, is as peaceful in character as would be their enterprises in time of peace. As Lord Justice Atkin said in the *Matiana* case, (1919) 2 K. B. 670, the sheep are not the shepherd and are not engaged in the operation of shepherding.

A much more important decision of this Court, and the only one in fact which bears directly upon this case, is *Morgan v. United States*, 14 Wall. 531 (more fully reported in 8 Court of Claims Reports, 18). This case distinctly repudiates the conclusion reached by the two minority judges in the House of Lords in the *Matiana* case, [1921] A. C. 99, namely, that the order of the convoy commander in prescribing the dangerous course was the cause of the loss. In the *Morgan* case it appears that the



owner of a vessel had chartered her to the Government during the Civil War. The vessel was manned by the owner; the Quartermaster's Department, United States Army, directed how she should be loaded and where she should go. The charterparty provided: "The war risk to be borne by the United States. The marine risk to be borne by the owners." The vessel took on board at Brazos, Texas, troops and stores for immediate transportation to New Orleans. The bar at the mouth of the harbor was difficult and dangerous; when the vessel was ready to proceed the wind was high and the water low. The quartermaster in authority at Brazos ordered a government tug to aid in taking the vessel over the bar; but she struck bottom, swung round inside the bar, and returned to her landing. The quartermaster, nevertheless, again ordered the vessel to proceed to sea. This order was given with full knowledge of the danger of crossing the bar, and against the judgment of both the master of the vessel and the pilot; but the exigencies of the service, in the judgment of the quartermaster, required the attempt to be made. The master, under this order of the quartermaster, again attempted to go out, but the vessel struck heavily, and was damaged so much that, after discharging the troops and stores, she had to be towed to New Orleans. The Court held that the owner, not the government, must bear the loss:

"If, therefore, the stranding of the boat in going over the bar was owing to a peril of the sea, her owners, and not the government, must bear the loss. That the high wind and low stage of water were the efficient agents in producing this disaster are too plain for controversy. They were the proximate causes of it, and in obedience



to the rule '*causa proxima non remota spectatur*' we cannot proceed further in order to find out whether the fact of war did not create the exigency which compelled the employment of the vessel."

This case was cited with approval by this Court as recently as *New Orleans-Belize Royal Mail and Central American Steamship Co. v. United States*, 239 U. S. 202, 206. We submit that it disposes completely of the ground upon which the dissent in the convoy case is based.

The petitioner's argument ignores the fundamental distinction between causes and conditions. Not all acts in time of war are warlike. As Lord Justice Atkins said in the *Petersham* case, (1919) 2 K. B. 670:

"It is true that the voyage is performed in war time and under war conditions. It is an operation in war, but not a warlike operation. Like many other peaceful operations conducted in time of war, it is conducted under different conditions to those of peace. The risks are increased; the risk of collision by sailing without lights; the risk of stranding by sailing on unaccustomed routes; the risk of foundering by difficulties in securing, when needed, necessary repairs. But to increase marine perils by reason of war is not to convert them into war perils."

The petitioner's theory seems to be that indirect assistance given to the furtherance of war interests is in itself a warlike operation. But in marine insurance we are concerned with proximate, not with remote causes; and once this principle is overlooked there is no stopping place short of the conclusion that in a legal, as well as in the "large sense" referred to by Judge Hough, "every act of the warring countries after the home-staying population was fed, clothed and sheltered, was but a mani-



festation of war." If indirect assistance to the successful prosecution of war is a warlike operation, then every subscriber to the Liberty Loans was engaged in a warlike operation.

It is respectfully submitted that the petition should be denied.

CHARLES C. BURLINGHAM,  
VAN VECHTEN VEEDER,  
Attorneys for Respondent.



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QUEEN INSURANCE COMPANY OF AMERICA v.  
GLOBE & RUTGERS FIRE INSURANCE COM-  
PANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 116. Argued December 6, 1923.—Decided January 7, 1924.

1. Clauses in a marine insurance policy excepting, "all consequences of hostilities or warlike operations," and in a war risk insurance policy insuring against acts "authorized by and in prosecution of hostilities," should be construed narrowly as applicable only where warlike acts or operations are the proximate cause of a loss. P. 492.



2. There are special reasons for construing such policies in harmony with the marine insurance law of England. P. 493.
  3. Where the cargo lost was all contraband, shipped in an Italian steamship from this country to Italy during the late war, and consisted in part of supplies and munitions for the Italian Government, and where the loss occurred while the vessel was in a convoy sailing with screened lights, protected by British, Italian and American war vessels and subject to the command of a naval officer, and resulted from a collision with a British steamship in another convoy similarly commanded which met the first one in the dark,—held, that the loss was not attributable to warlike operations, within the meaning of the above exception. P. 491.
- 282 Fed. 976, affirmed.

CERTIORARI to a decree of the Circuit Court of Appeals affirming a decree of the District Court which dismissed a libel upon an insurance policy.

Mr. Oscar R. Houston, with whom Mr. D. Roger Englar and Mr. George S. Brengle were on the brief, for petitioner.

I. The loss was a proximate result of "acts of kings in prosecution of hostilities."

The lower courts reached their conclusions, not on principle, but out of deference to the decision of the House of Lords in the cases of *The Matiana* (1921) 1 A. C. 99; s. c. (1919) 1 K. B. 632; (1919) 2 K. B. 670; and *The Petersham* (1921) 1 A. C. 99; s. c. (1919) 1 K. B. 575. [Discussing also *The St. Oswald* (1918) 2 K. B. 879; *The Argantock* and *The Richard de Larrinaga* (1921) 2 A. C. 141; s. c. (1920) 1 K. B. 705; *The Bonvilston* and *Gee-long* (1923) A. C. 191; *The Warilda* (1923) A. C. 292.]

Under these decisions, if two ships (whether privately operated or under requisition) traveling at night at full speed, without lights, in accordance with Admiralty instructions, come into collision, without either being at fault, then, if both are carrying commercial cargoes, the loss falls upon marine underwriters, *The Petersham*, *supra*; but if either is carrying government stores to a war base,



the loss falls upon war risk underwriters, even though the character of the cargo in no way affects the navigation of the vessels. *The Bonvilston, supra*. If a merchant ship carrying a commercial cargo comes into collision with a warship, then, if both ships are at fault, or if neither is at fault, or if the warship alone is at fault, the loss falls upon war risk underwriters, *The Ardgantock* and *The Warilda, supra*; even though the warship is not actually performing any naval duty but is merely proceeding to some port where she intends to take up naval operations. *The Richard de Larrinaga, supra*. But if the merchant ship alone is negligent, the loss falls on marine underwriters. *Charente S. S. Co. v. Director of Transports*, 38 T. L. R. 148.

The above distinctions disregard the real substance of the issues. The intent of all parties is that marine underwriters during war shall continue to bear the same risks they bore in times of peace, and that new risks brought about by war are specially insured at a higher premium. This intent is wholly defeated by making the character of the cargo of either vessel determine upon which set of underwriters the loss will fall, or by treating a collision with escorting warships as falling upon a different set of underwriters from a collision with one of the escorted ships. The proper test is to look at the efficient, dominating, or proximate cause. Was the collision the result of the ordinary causes of collision, such as faulty navigation, fog, neglect of sailing rules, etc., or was it the result of the act of the naval authorities in sending two fleets of ships, in close formation, showing no lights, on courses which met, without warning either fleet of the impending approach of the other? See (1921) 1 A. C. 135. The naval authorities by their handling of the convoys created a new risk, as part of the general plan for prosecuting hostilities, and it was this new risk that was the proximate cause of the collision. Cf. *The Canadia*, 246 Fed. 759; *The Llama*, 291 Fed. 1.



II. Merchant ships sailing in convoy are engaged in a warlike operation, under American law. *The Atalanta*, 3 Wheat. 409; *The Nereide*, 9 Cr. 388; *The Ship Galen*, 37 Ct. Clms. 89; *The Schooner Nancy*, 27 Ct. Clms. 99; *The Black Sea Nymph*, 36 Ct. Clms. 369; Woolsey, Int. Law, 4th ed., § 193; 1 Kent Com., 4th ed., § 155; 7 Moore, Int. Law Dig., p. 494.

III. There is no commercial necessity requiring the American courts to follow the British decisions.

*Mr. Van Vechten Veeder*, with whom *Mr. Charles C. Burlingham* was on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a libel in admiralty upon a New York policy insuring cargo on the Italian steamship *Napoli* lost by collision in the Mediterranean, in or near the Gulf of Lyons, on July 4, 1918. The libellant also in New York had insured the cargo concerned against marine risks and the libellee had insured it against war risks. Each company by agreement paid half the loss subject to adjustment and took an assignment of the claim of the assured against the other. The main question in the case is whether the loss was covered by the libellee's policy as the libellant contends. We were asked to assume that the exception of "all consequences . . . of hostilities or warlike operations" in the marine policy and the liability for "acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations" assumed by the libellee were coextensive. For the purposes of argument we shall do so. The Courts below in deference to the English decisions held that the loss could not be attributed to warlike operations. There was a difference of opinion as to whether the collision was due to faulty navigation, but all the judges agreed that it was expedient to follow the English law. 278 Fed. 770. 282 Fed. 976.



It will not be necessary to state the facts in detail. They are fully set forth in the decisions below but those that are material to our conclusion need but a few words. The Napoli sailed from New York for Genoa with a cargo of which a part was intended for the Italian Government and a small part was munitions of war. All of it was contraband. At Gibraltar she joined a convoy, as it was practically necessary to do although not ordered by the military powers. The convoy sailed with screened lights, protected by British, Italian and American war vessels, and navigated by an Italian commander on the Napoli, subject to the command of a British captain as the senior naval officer present. The route to be followed was ordered beforehand up to a point where instructions from Genoa were to be received but were not, as the convoy was ahead of the scheduled time. At about midnight July 4 another convoy similarly commanded met this one head on. It was seen only a very few minutes before the meeting, there was much confusion, and one of its vessels, the Lamington, a British steamship, struck the Napoli and sank her. As our judgment is based on broader grounds, we do not describe the movements bearing upon the nice question whether the navigation of the Napoli or the Lamington was in fault.

To show that the loss is to be attributed to warlike operations, the petitioner points to sailing under convoy and without lights, both made necessary by the war, as enough. To this it adds that the cargo of the Napoli was an aid in carrying on the struggle, a matter of special importance in the late war, where the issue depended so largely on supplies, where, as it was put by Hough, J., below, "commerce existed only as an adjunct to war"; that the routes and particulars of navigation were determined by naval command; and that the naval authorities were responsible for the meeting of the two convoys without previous notice. It urges with plausibility that the



collision would not have happened but for the proceedings thus prescribed as an essential part of the conduct of the war. As corroborating its large interpretation of "consequences of hostilities or warlike operations" it states that, while the premiums upon war risk insurance were greatly increased, those upon marine risks underwent but little change.

On the other hand the common understanding is that in construing these policies we are not to take broad views but generally are to stop our inquiries with the cause nearest to the loss. This is a settled rule of construction, and, if it is understood, does not deserve much criticism, since theoretically at least the parties can shape their contract as they like. *Morgan v. United States*, 14 Wall. 531, applied this rule beyond the limits of insurance to a charter party made during the Civil War, by which the United States assumed the war risks and the owners were to bear the marine risks. The boat carrying troops and stores was compelled to put to sea by the orders of a quartermaster given to meet what he thought the exigency of the service, although the danger was obvious and the master and pilot advised against it. This Court recognized the hardship of the owners' case, in view of the peremptory order to proceed to sea, but declined to look beyond the wind and waves that were the immediate cause of the loss. A similar decision was reached by the House of Lords after the late war in a case where the chartered vessel, the *Petersham*, was sailing without lights because of Admiralty regulations and collided with a Spanish vessel also without lights, and it was found that because of the absence of lights the collision could not have been avoided by reasonable care. *Britain Steamship Co. v. The King*, [1921], 1 A. C. 99; affirming the decision of the Court of Appeal, [1919], 2 K. B. 670. See *Morgan v. United States*, 5 Ct. Clms. 182, 194; *Reybold v. United States*, 5 Ct. Clms. 277, 283, 284.



The same principle was applied to insurance, the special field of this narrow construction, in the case of the *Matiana* heard and decided with the *Petersham*, where a vessel was sailing under convoy and struck a reef without negligence on the part of the master or the naval officer in command of the escort. The discussion turned largely on the question whether the remoter causes of the collision and stranding were warlike operations, and from the tenor of the arguments on the one side and the other it may be doubted whether *Morgan v. United States* would not have been thought to go too far. But the *Matiana* certainly goes as far as the decision below in this case. There are special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business, and as we could not reverse the decision below without overruling *Morgan v. United States*, we are of opinion that the decree of the Circuit Court of Appeals must be affirmed. We repeat that we are dealing not with general principles but only with the construction of an ancient form of words which always have been taken in a narrow sense, and in *Morgan v. United States* were construed to refer only to the nearest cause of loss even when there were strong grounds for looking beyond it to military command.

*Decree affirmed.*